

BILL ANALYSIS

C.S.H.B. 3816
By: Morrison
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that, as one of the state's largest agencies and tasked with oversight of many of the state's most important industries, the Texas Commission on Environmental Quality (TCEQ) should perform a rigorous regulatory analysis for all its proposed environmental rules and not just those rules considered to be major. C.S.H.B. 3816 seeks to address this issue by setting out provisions relating to the regulatory analysis of rules proposed by TCEQ.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3816 amends the Government Code to exempt a major environmental rule adopted by the Texas Commission on Environmental Quality (TCEQ) from Administrative Procedure Act provisions relating to regulatory analysis of major environmental rules and amends the Water Code to set out provisions relating to TCEQ adoption of environmental rules instead. The bill requires TCEQ, before adopting an environmental rule, to conduct a regulatory analysis that:

- identifies the problem the rule is intended to address;
- determines whether a new rule is necessary to address the problem; and
- considers the benefits and costs of the proposed rule in relationship to state agencies, local governments, the public, the regulated community, and the environment.

C.S.H.B. 3816 requires TCEQ, when giving notice of an environmental rule, to incorporate into the applicable fiscal note a draft impact analysis describing the anticipated effects of the proposed rule. The bill requires the draft impact analysis, at a minimum, to do the following:

- identify the problem the rule is intended to address;
- identify the environmental benefits that the agency expects to result from implementation of and compliance with the rule, including the projected level of reduction of pollutants or contaminants in air, water, and soil media;
- identify and describe the costs that the agency expects that state agencies, local governments, the public, and the affected regulated entities, other than small businesses, will incur from implementation of and compliance with the rule; and
- identify and describe in a separate economic impact analysis the costs that the agency

expects that small businesses will incur from implementation of and compliance with the rule.

C.S.H.B. 3816 requires TCEQ, in identifying the environmental benefits of an environmental rule, to include the modeled improvement for the criteria pollutant design value expected from implementation of the rule, if the rule will be included in the state implementation plan under the federal Clean Air Act. The bill requires TCEQ, after considering applicable public comments and determining that a proposed environmental rule should be adopted, to prepare an applicable final regulatory analysis. The bill defines "cost," "environmental benefit," "environmental rule," and "small business" for purposes of its provisions.

C.S.H.B. 3816 amends the Health and Safety Code to make a conforming change.

C.S.H.B. 3816 applies only to an environmental rule proposed by TCEQ for which applicable notice is given on or after December 1, 2019.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3816 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions that:

- authorize a person who submitted a comment to challenge the validity of an environmental rule that is not proposed and adopted in strict compliance with the bill's procedural requirements by filing an action for declaratory judgment not later than the 30th day after the rule's effective date; and
- make an environmental rule invalid if the court determines that the rule was not proposed and adopted in such compliance.