

## **BILL ANALYSIS**

C.S.H.B. 1820  
By: Zwiener  
Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There are ongoing concerns regarding the ability of the Texas Commission on Environmental Quality (TCEQ) to appropriately penalize owners and operators who repeatedly violate permit conditions. Despite most industry operators doing their best to remain in compliance with regulatory standards, public confidence in TCEQ's enforcement standards has waned, especially in light of the recent major accidents that not only placed communities, first responders, and workers at serious risk but that also resulted in significant economic losses to the state. These issues stem in part from TCEQ'S inadequate statutory authority to rein in bad actors but also at fault are low financial penalties that do not adequately deter bad actors from continuing to violate their permits. The state cannot continue to enjoy economic growth if it cannot ensure safe and reliable systems.

C.S.H.B. 1820 seeks to address these concerns by setting out provisions relating to the regulation, monitoring, and enforcement of matters under TCEQ jurisdiction in order to enhance enforcement capability to prevent future serious accidents and ensure compliance.

### **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 rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 6 of this bill.

### **ANALYSIS**

C.S.H.B. 1820 amends the Water Code to authorize the Texas Commission on Environmental Quality (TCEQ) to increase the amount of an administrative penalty by an amount not to exceed 50 percent of the maximum authorized penalty if the alleged violator has a history of previous violations. The bill requires TCEQ to annually compute and publish a dollar amount to reflect inflation for the specified penalty amounts, sets out related provisions, including a provision authorizing TCEQ to adopt necessary rules, and makes related changes.

C.S.H.B. 1820 requires the amount of the civil penalty for knowingly disclosing false information or negligently failing to disclose a hazard as required by the Manufacturing Facility Community Right-To-Know Act or the Public Employer Community Right-To-Know Act to be tripled if a first responder who is not employed at the facility that is the subject of the penalty, or who does not participate in a shared service agreement with another facility, is injured as a result of exposure to hazardous material while responding to an incident at the facility. The bill requires the amount of a penalty against a facility operator who violates those acts or the

Nonmanufacturing Facilities Community Right-To-Know Act, or a rule adopted or order issued under those acts, to be tripled under that same condition.

C.S.H.B. 1820, effective September 1, 2023, raises from \$25,000 to \$50,000, or the inflation-adjusted amount as provided for by the bill, the cap on the daily penalty for each violation within TCEQ jurisdiction to enforce that is not otherwise specified in provisions relating to maximum penalties. The bill increases from not less than \$50 nor greater than \$25,000 to not less than \$100 nor greater than \$50,000, or to the inflation-adjusted amount as provided for by the bill, the daily civil penalty assessed against a person who causes, suffers, allows, or permits certain violations of a statute, rule, order, or permit relating to certain matters within TCEQ jurisdiction to enforce.

C.S.H.B. 1820 increases from not less than \$100 nor greater than \$25,000 to not less than \$200 nor greater than \$50,000, or to the inflation-adjusted amount as provided for by the bill, the civil penalty assessed against a defendant for whom it is shown on the trial has previously been assessed a civil penalty for a violation of a statute within TCEQ jurisdiction or a rule adopted or an order or a permit issued under such a statute within the year before the date on which the violation being tried occurred.

C.S.H.B. 1820 amends the Health and Safety Code to require TCEQ to conduct a study under the Texas Clean Air Act on the efficacy of imposing on the owner or operator of a regulated entity that reports an emissions event a penalty of not less than \$1 per pound of each applicable pollutant released that exceeds an authorized emission limit for the pollutant or that is not authorized by any permit, permit by rule, or regulation. The bill requires TCEQ to assess which pollutants to include in the penalty based on risks posed to the following:

- human health;
- public safety; and
- environmental health.

The bill requires TCEQ to examine the potential effects of the penalty, including the following:

- the potential to improve compliance amongst operators; and
- anticipated costs to facilities as a result of the penalty.

The bill requires TCEQ, not later than March 1, 2022, to prepare and submit to the governor, the lieutenant governor, and the legislature a report on the study's findings. These provisions expire September 1, 2027.

C.S.H.B. 1820 specifies that the location of a regulated entity that is included in the entity's report to TCEQ regarding an emissions event be expressed in terms of longitude and latitude.

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1820 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 the original's provisions that amended the Texas Clean Air Act to do the following:

- require TCEQ by rule to provide for the imposition of permit conditions that establish the following:
  - a maximum number of emissions events that may occur in a year before TCEQ will temporarily revoke the facility's permit or take another enforcement action; and

- a maximum volume of emissions events, expressed in terms of a percentage of permitted emissions, that may occur in a year before TCEQ will temporarily revoke the facility's permit or take another enforcement action;
- require TCEQ to enforce rules concerning emissions events by means of civil or administrative penalties or by injunctive relief as provided by specified Water Code provisions;
- prohibit TCEQ from exempting excess emissions from penalties or injunctive relief;
- require TCEQ to develop and implement policies to limit the cumulative effects of emissions from maintenance, startups, and shutdowns of facilities; and
- establish that the fact that a facility does not exceed a threshold established by the aforementioned limitation of cumulative effects may not be considered as evidence of good faith or a lack of effect on environmental or public health.

The substitute does not repeal Texas Clean Air Act provisions, as the original did, that do the following:

- authorize TCEQ by rule to establish an affirmative defense to a TCEQ enforcement action if an emissions event meets criteria defined by TCEQ rule; and
- prohibit a person from claiming an affirmative defense to a TCEQ enforcement action if the person failed to take corrective action under a corrective action plan approved by TCEQ within the time prescribed by TCEQ and an emissions event recurs because of that failure.

Whereas the original required the owner or operator of a regulated entity that reports an emissions event to pay to TCEQ a mandatory penalty of not less than \$1 per pound of each pollutant released that exceeds an authorized emission limit for the pollutant or that is not authorized by any permit, permit by rule, or regulation, the substitute requires TCEQ to conduct a study and submit a report on the efficacy of imposing on such an owner or operator such a penalty.

The original provided for the development and maintenance of a toxic chemical emergency alert system under the Manufacturing Facility Community Right-To-Know Act. The substitute does not include that provision.

The substitute differs from the original by making certain technical corrections regarding a cross reference.

The substitute includes the original's provision requiring that a penalty be tripled with regard to the Manufacturing Facility Community Right-To-Know Act, the Public Employer Community Right-To-Know Act, or the Nonmanufacturing Facilities Community Right-To-Know Act with regard to the injury of a first responder. However, the substitute specifies that this provision is applicable when the injured first responder is not employed at the facility that is the subject of the penalty or does not participate in a shared service agreement with another facility.

The substitute differs from the original by postponing from September 1, 2021, to September 1, 2023, the effective date of the bill's raising of the cap on the daily penalty for each violation within TCEQ jurisdiction to enforce that is not otherwise specified in provisions relating to maximum penalties. The substitute does not include a provision included in the original replacing the authorization under provisions relating to maximum penalties for each day that a continuing violation occurs to be considered a separate violation with a requirement that each such day be considered a separate violation.

The substitute does not include the original's provisions that do the following:

- establish that a penalty recovered under certain Water Code civil suit provisions is in addition to any penalty assessed by TCEQ; and

- require TCEQ, after notice and hearing, to revoke, suspend, or revoke and reissue an applicable permit or exemption if a violation of a term or condition of the permit causes a catastrophic event that results in an individual's death or serious injury.