

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 27, 2021

TO: Honorable Brooks Landgraf, Chair, House Committee on Environmental Regulation

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1820 by Zwiener (Relating to the regulation, monitoring, and enforcement of matters under the jurisdiction of the Texas Commission on Environmental Quality; authorizing the assessment or increase of civil and administrative penalties.), **Committee Report 1st House, Substituted**

The bill would have a positive, but indeterminate, fiscal impact to the state because revenue increases that would be realized from assessed civil penalties cannot be estimated.

The bill would amend the Health and Safety and Water Codes concerning the Texas Commission on Environmental Quality's assessment of penalties.

The bill would allow TCEQ to adjust the maximum administrative penalty to be assessed for dry cleaner environmental responses for inflation based on the Consumer Price Index for All Urban Consumers using fiscal year 2021 as the base year and adjusting penalties accordingly on an annual basis.

The bill would require TCEQ to conduct a study on establishing new penalties for excessive emissions events whereby the owner or operator of a regulated entity that reports an emissions event would be required to pay the 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 is not authorized by any permit, permit by rule, or regulation with TCEQ authorized to assess penalties based on individual pollutants that exceed the owner or operator's permit.

The bill would authorize the TCEQ to adjust the amount of a penalty assessed for inflation. The bill would make this increase applicable to various penalties assessed by the TCEQ as identified in the bill and would require the TCEQ to triple the civil penalty assessed if a first responder is injured as a result of exposure to hazardous materials while responding to an incident at a facility that is subject to a penalty.

The bill would increase the maximum penalty for certain violations as defined in the bill from \$25,000 to \$50,000 per day or by an inflation-adjusted amount using the method previously described effective September 1, 2023.

The bill would increase the amount of penalties that could be assessed by TCEQ by at most 50 percent of the maximum authorized penalty if the alleged violator has a history of previous violations. The bill would allow TCEQ to use the inflation-adjusted amounts when determining the maximum administrative penalty that can be assessed.

The bill would increase the minimum civil penalty from \$50 to \$100 and the maximum civil penalty from \$25,000 to \$50,000 and would allow a court or jury to assess a civil penalty for each day of a violation with the minimum and maximum amounts for the civil penalty as defined in statute to be adjusted for inflation based on the Consumer Price Index for All Urban Counties.

The bill would require the TCEQ to triple the civil penalty assessed to a person that knowingly discloses false information or negligently fails to disclose a hazard if a first responder is injured as a result of exposure to hazardous materials while responding to an incident at a facility that is subject to a penalty.

The bill would increase the minimum and maximum civil penalty amounts assessed for continuing violations of resulting in a civil penalty from \$100 to \$200 and \$25,000 to \$50,000 respectively and would allow a civil penalty to be increased by up to 50 percent of the maximum allowed penalty if the alleged violator has a history of previous violations.

Based on the assessment of the TCEQ, this estimate assumes the agency would require an additional 3.0 FTEs to address the provisions of the bill concerning the increase in administrative penalties and due to an anticipated increase in the number of Inability to Pay claims raised by enforcement respondents due to the increase in penalties for a cost of \$269,893 in fiscal year 2024 and \$256,393 in each subsequent year in General Revenue-Dedicated funding. This includes an additional 2.0 Financial Analyst I positions within the Office of Administrative Services and an additional 1.0 Attorney I position within the Litigation Division.

Based on information provided by the TCEQ and the analysis of the Comptroller of Public Accounts, the amount of future administrative penalties is unknown.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 304 Comptroller of Public Accounts, 477 Comm/Emer Communicat, 575 TX Division of Emergency Management, 582 Commission on Environmental Quality

LBB Staff: JMc, AJL, MW, GDZ