

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 12, 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.), **As Introduced**

The bill would have an indeterminate fiscal impact to the state. The bill could result in a revenue increase of over \$1.5 billion; however, as the amount of future administrative penalties is unknown, the fiscal impact cannot be estimated. In addition, a General Revenue cost of \$20,116,084 would be necessary for the Texas Division on Emergency Management to maintain a toxic chemical emergency alert system and a General Revenue-Dedicated cost of \$9,788,316 would be necessary for the Texas Commission on Environmental Quality to implement the provisions of the bill concerning emissions events and alternative defense.

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

The bill would require the TCEQ to provide by rule for the imposition of permit conditions that establish a maximum number and volume of emissions events that may occur in a year before the commission would temporarily revoke a facility's permit or take another enforcement action. Additionally, the bill would require the TCEQ to enforce rules concerning emissions events through civil or administrative penalties or injunctive relief and would prohibit the TCEQ from exempting excess emissions from penalties or injunctive relief.

The bill would establish 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 instruct the State Emergency Response Commission (SERC) through the Texas Division of Emergency Management (TDEM) to develop and maintain a toxic chemical emergency alert system to notify affected persons in the event of a release by a facility that, according to the responsible state agency, will substantially endanger human health or the environment. The responsible state agency would be required to issue a notification within 30 minutes after making such a determination. The responsible state agency would also be required to determine when the release is no longer a threat, and notify affected persons using the alert system. The alert system would be required to provide notification through reverse 9-1-1 calls, text messages, e-mails, social media, and other instant messaging systems, and would be required to include: the area(s) affected by the release; a geographic display of the severity of the threat posed by the release; the chemicals involved in the release; the toxicity of the chemicals; the projected movement of the release; instructions for protection from exposure to the release or for reducing exposure to the release; a link to an internet website or message system that maintains current information on the area(s) affected by the release; and, a link to an Internet website or other message system that describes a symptom of any illness caused by the release that may require emergency medical treatment.

Under the provisions of the bill, SERC may partner with other state agencies in implementing this system and

would be required to allow persons to register for their preferred method of receiving the notice, as well as allowing a person the option of not receiving the alerts. The alert system would be required to allow the responsible state agency to modify the notification based on the distance of the release to the person receiving the notification and the projected movement of the release. The bill would instruct SERC to review and modify the alert system as appropriate every four years. The alert system would be required to be established no later than January 1, 2023.

Based on the assessment of the Texas Division of Emergency Management, this analysis assumes that TDEM would require additional full time employees to design, implement, activate, and maintain the alert system. This includes 7.8 FTEs consisting of 5.0 Program Specialist (\$47,926 annually for each position), 1.0 Program Specialist IV (\$75,000 annually), 0.8 Program Specialist V (\$50,893 annually), and 1.0 Unit Chief (99,500 annually) with total estimated benefits of \$151,226 each year. In addition, TDEM would be required to a more robust alert notification system that is capable of geo-caching, statewide alert dissemination, and provides for multiple modes of alerting. In addition, the agency anticipates additional operational and maintenance expenses of \$10,470,482 in fiscal year 2022 and \$8,413,100 each subsequent fiscal year. This estimate assumes the costs associated with establishing the alert system would be entirely offset by revenue gains due to the increased penalty amounts.

The bill would authorize the TCEQ to increase the amount of a penalty assessed by up to 50 percent of the maximum authorized penalty if the alleged violator has a history of previous violations. 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 require the TCEQ to adjust penalty amounts 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 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.

The bill would specify that penalties recovered due to civil suits initiated by the Office of the Attorney General are in addition to any penalty previously assessed by TCEQ. The bill would require the TCEQ to revoke, suspend, or revoke and reissue a permit or exemption if a violation of a term or condition of a permit causes a catastrophic event that results in the death or serious injury of an individual.

The bill would repeal portions of the Health and Safety Code that authorizes the TCEQ to establish an affirmative defense to an enforcement action for emissions events if TCEQ criteria defined in rule are met and that a person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under an approved corrective action plan within the prescribed time and an emissions event recurs because of that failure.

Based on the assessment of the TCEQ, this estimate assumes the agency would require an additional 59.0 FTEs to address the provisions of the bill concerning emissions events and alternative defense for a cost of \$5,097,408 in fiscal year 2022 and \$4,690,908 in each subsequent year in General Revenue-Dedicated funding. This includes an additional 10.0 FTEs for the agency's Litigation division because this estimate assumes the bill will result in a general increase in administrative penalties in enforcement cases. This also includes an

additional 49.0 FTEs that would be needed to process the additional violations for emissions events.

Based on information provided by the TCEQ and the analysis of the Comptroller of Public Accounts, fiscal year 2020 penalty amounts extrapolated to estimate increased revenues in fiscal year 2022 and subsequent fiscal years under the bill's provisions could result in a revenue increase of over \$1.5 billion; however, as the amount of future administrative penalties is unknown, the fiscal impact cannot be estimated.

The bill would take effect September 1, 2021.

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

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