

BILL ANALYSIS

Senate Research Center

S.B. 471
By: Springer
Water, Agriculture & Rural Affairs
5/31/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With the population growth in Texas over the last decade, there has been commensurate growth in manufacturing and increased use of precious resources. This use of finite resources calls for appropriate oversight to ensure access to these resources for current and future generations. This bill will provide the Texas Commission on Environmental Quality (TCEQ) the ability to protect and enhance access to resources and protect against unnecessary impediments that may arise out of multiple complaints by the same individual for which TCEQ finds no infractions.

From December 2019 to the present, the DFW Region Office of TCEQ has received approximately 44 complaints from about eight citizens regarding the operations of 5 concrete batch plant facilities, resulting in no environmental findings. In 2022 one individual filed 28 complaints against one landfill with no findings, and two individuals filed 39 complaints against two asphalt operations, which resulted in no findings by TCEQ. These vexatious complaints cost TCEQ time and resources that detract from legitimate violations that need investigation.

The substitute bill for S.B. 471 uses the civil procedure for vexatious complaints used by the state courts for decades to allow TCEQ to dismiss vexatious complaints while ensuring the civil liberties of those filing real complaints and provides TCEQ the flexibility to investigate multiple complaints in batches.

Author's Summary Analysis:

The Water Code's Section 5.176 has been amended by adding a new Subsection (c) which states that TCEQ is not obligated to investigate certain complaints. This includes complaints that can be addressed during other TCEQ activities and complaints that are filed by an individual that are unlikely to be substantiated by TCEQ. Specifically, if the complaint is repetitive or redundant of other complaints concerning the same site investigated in the previous 12 months that were not substantiated by TCEQ, or if the complainant has filed at least five complaints in the past seven years that were not substantiated by TCEQ. The bill makes conforming changes.

The Committee Substitute removes:

- "Section 5.1774. FEES FOR MULTIPLE COMPLAINTS. (a) Requires TCEQ to charge a person who files a complaint a fee before TCEQ investigates the complaint if, in the same calendar year in which the complaint is filed, the person has filed at least three complaints with TCEQ for which neither TCEQ nor a local enforcement official took enforcement action before closing the file on the complaint."

The Committee Substitute adds:

TCEQ is not required to investigate a complaint that:

- may be addressed during other TCEQ activities; or
- was filed by an individual when there is not a reasonable probability that TCEQ can substantiate the complaint, and
- the complaint is repetitious or redundant of other complaints concerning the same site investigated in the preceding 12 months that were not substantiated by TCEQ; or
- the complainant has filed at least five complaints that were not substantiated by TCEQ in the preceding seven years.

The Committee Substitute compared to the original Committee Substitute:

The original committee substitute allowed TCEQ to charge a complainant for the reasonable costs associated with investigating a complaint by a vexatious complainant if TCEQ investigates the complaint. The final committee substitute repeals the clause, so if TCEQ proceeds to investigate a filing by a vexatious complainant they do not have authority to charge the complainant the costs associated with the investigation.

S.B. 471 amends current law relating to the investigation by the Texas Commission on Environmental Quality of certain complaints.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.176, Water Code, by adding Subsection (c), as follows:

(c) Provides that the Texas Commission on Environmental Quality (TCEQ) is not required to investigate a complaint:

(1) that is authorized to be addressed during other TCEQ activities; or

(2) that was filed by an individual when there is not a reasonable probability that TCEQ can substantiate the complaint and:

(A) the complaint is repetitious or redundant of other complaints concerning the same site investigated in the preceding 12 months that were not substantiated by TCEQ; or

(B) the complainant has filed in the preceding seven years at least five complaints that were not substantiated by TCEQ.

SECTION 2. Amends Section 5.177(c), Water Code, as follows:

(c) Provides that TCEQ is not required to provide the information described in Subsection (a) (relating to requiring TCEQ to provide to the person filing the complaint about a matter within TCEQ's regulatory jurisdiction a copy of TCEQ's policies and procedures related to complaint investigation and resolution) or (b) (relating to requiring TCEQ to notify certain persons of the status of the investigation unless notice would jeopardize an undercover investigation) to a complainant who:

(1)-(2) makes nonsubstantive changes to these subdivisions; or

(3) files a complaint described by Section 5.176(c).

Makes nonsubstantive changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2023.