

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 18, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB1397 by Schwertner (Relating to the continuation and functions of the Texas Commission on Environmental Quality.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1397, As Passed 2nd House : an impact of \$0 through the biennium ending August 31, 2025.

However, there is an estimated two year net impact of (\$6,217,882) to various General Revenue-Dedicated accounts and an indeterminate gain in General Revenue Funds from increased penalties through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from Clean Air Account 151	Probable Savings/(Cost) from Water Resource Management 153	Probable Savings/(Cost) from Waste Management Acct 549	Probable Savings/(Cost) from Petro Sto Tank Remed Acct 655
2024	(\$1,669,743)	(\$975,414)	(\$860,687)	(\$411,837)
2025	(\$859,212)	(\$672,477)	(\$556,590)	(\$211,922)
2026	(\$847,107)	(\$667,900)	(\$552,014)	(\$208,937)
2027	(\$847,107)	(\$667,900)	(\$552,014)	(\$208,937)
2028	(\$847,107)	(\$667,900)	(\$552,014)	(\$208,937)

<i>Fiscal Year</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	28.0
2025	28.0
2026	28.0
2027	28.0
2028	28.0

Fiscal Analysis

The bill would amend and add several sections to the Health and Safety Code and the Water Code. It would continue the Texas Commission on Environmental Quality (TCEQ) for twelve years and set the next Sunset review date for the TCEQ to be in 2035. The bill would repeal the abolishment clauses for the Environmental Flows Advisory Group and Science Advisory Committee.

The bill would require TCEQ to update its board member training manual and require board members to annually attest to receiving and reviewing the manual; leave the public comment period open for 36 hours following a public hearing on air permit applications; post permit applications, revisions, amendments, and associated materials at the time the application becomes administratively complete but allows the agency to exclude supporting materials too large to post online; include certain applicant information on each public notice including the applicant's name, the type of permit, and the location of the proposed or existing permitted facility; and send notice to state representatives and senators of an application for a new municipal utility district or other type of district proposed in an area they represent.

The bill would require TCEQ to consider the number of minor, moderate, and major violations when setting the criteria for an entity to be classified as a repeat violator and would allow TCEQ's Executive Director to review, suspend, or reclassify permitted entities' compliance history if the Executive Director finds that exigent circumstances exist. The bill would increase the maximum administrative penalty from \$25,000 to \$40,000 per day for each violation that involves a release of a harmful level of pollutants or an actual unlawful diversion of water.

The bill would add statute authorizing TCEQ to publish notices of permit applications on its website and through other means. Under the provisions of the bill, the commission would be required to consider and accommodate individuals in the affected area who do not have access to the internet. The bill would not authorize TCEQ to utilize its online website to post notifications of permits online if that does not comply with federally required posting notices. If a permit type requires a physical notice the applicant must provide a copy of the published notice to TCEQ.

The bill would create a diversion program for small business and local governments. The bill would require that the program include compliance assistance training, technical assistance and training. The bill would prohibit TCEQ from pursuing enforcement action against a small business or local government after the entity has completed the diversion program.

The bill would require that entities with a temporary or open-ended permit annually confirm the operational status of the permitted facility. The bill would require that all temporary or open-ended permit holders confirm their operation status by December 31, 2024.

The bill would create a new type of permit for temporary concrete batch plant operations related to a public works project. The newly created permit would be governed by the existing environmental regulations applied to permanent concrete batch plants. The bill would set a limit of 180 days or to supply material for a single project but not for other unrelated projects. The bill creates requirements for providing notice of the permitting of a temporary concrete batch plant.

The bill would require the Environmental Flows Advisory Group to adopt a biennial statewide work plan for updating environmental flow standards and require the Advisory Group to submit the work plan to TCEQ.

Methodology

This analysis and the table above reflects the fiscal impact based on information provided by the Sunset Advisory Commission (SAC) and TCEQ.

Based on information provided, this analysis assumes that costs required to comply with the provisions of the bill directing TCEQ to post all permit application materials on the agency's website would include \$1,000,000 in fiscal year 2024 for technology costs and \$300,584 in fiscal year 2024 and \$296,538 in fiscal year 2025 and in each subsequent year to provide 4.0 Information Specialist IV positions (4.0 FTEs).

Based on information provided by SAC and TCEQ, to post all permit applications online the agency would require 5.0 Program Specialist VI's (B23) with a cost of \$573,616 in fiscal year 2024 and an ongoing cost of \$579,419 in fiscal years 2025 through 2028. 3.0 FTEs would be funded out of General Revenue-Dedicated Water Resource Management Account No. 153 for a total cost of \$344,170 in fiscal year 2024 and an ongoing cost of \$347,651 in fiscal years 2025 through 2028. 2.0 FTEs would be funded out of General Revenue-Dedicated Solid Waste Management Account No. 549 for a total cost of \$229,447 in fiscal year 2024 and \$231,768 in fiscal years 2025 through 2028.

Based on the information provided, this analysis assumes the agency would also require \$100,000 in fiscal year 2024 to support improvements to its information technology interface that would support posting electronic notices on its website, providing email notices to stakeholders, and hosting virtual meetings related to those permits. According to information provided by TCEQ, the agency would require \$400,000 in fiscal year 2024 to develop an online application to enable annual reporting on the operation status of temporary and open-ended permit holders. Based on information provided by SAC and TCEQ, the agency will require \$48,483 in fiscal year 2024 and \$24,242 in fiscal year 2025 to mail notification letters to impact permit holders.

Based on the information provided, to implement provisions of the bill requiring TCEQ to consider violations of all severities when determining repeat violators, the agency would require \$15,000 in fiscal year 2024 to update its existing database.

Based on the information provided, creating an enforcement diversion program for small businesses and local governments would require \$80,000 in fiscal year 2024 to update TCEQ's existing system to implement the program, and 19.0 FTEs to support the program. TCEQ indicated that it would require 16.0 Natural Resource Specialist IIs, 1.0 Natural Resource Specialist III, 1.0 Natural Resource Specialist V, and 1.0 Program Supervisor VI each fiscal year. This analysis assumes that the total costs for these FTEs would be \$1,400,000 each fiscal year.

Based on the analysis of the Comptroller of Public Accounts, the revenue gain that would be realized from increasing the maximum administrative penalty fees included in the bill from \$25,000 to \$40,000 cannot be estimated because the number of penalties and the amount that would be assessed is unknown.

Technology

Based on information provided by the SAC and TCEQ, \$1,595,000 would be required for specific software and program upgrades to existing information technology systems.

Local Government Impact

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

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 580 Water Development Board, 582 Commission on Environmental Quality

LBB Staff: JMc, KDw, DKN, SD, MW, MOc, CMA