

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 25, 2023**

**TO:** Honorable Brian Birdwell, Chair, Senate Committee on Natural Resources & Economic Development

**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 Introduced**

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

However, there is an estimated two-year net impact of (\$5,064,847) 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 <i>General Revenue Related Funds</i>
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	Probable Savings/(Cost) from <i>Clean Air Account</i> 151	Probable Savings/(Cost) from <i>Water Resource Management</i> 153	Probable Savings/(Cost) from <i>Waste Management Acct</i> 549	Probable Savings/(Cost) from <i>Petro Sto Tank Remed Acct</i> 655
2024	(\$1,669,743)	(\$631,245)	(\$631,241)	(\$411,837)
2025	(\$859,212)	(\$324,826)	(\$324,823)	(\$211,922)
2026	(\$847,107)	(\$320,249)	(\$320,247)	(\$208,937)
2027	(\$847,107)	(\$320,249)	(\$320,247)	(\$208,937)
2028	(\$847,107)	(\$320,249)	(\$320,247)	(\$208,937)

<i>Fiscal Year</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	23.0
2025	23.0
2026	23.0
2027	23.0
2028	23.0

## **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 and associated materials at the time the application becomes administratively complete; include certain applicant information on each public notice including the applicant's name, the type of permit, and the address 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 to review, suspend, or reclassify permitted entities' compliance history if TCEQ finds that exigent circumstances exist. The bill would increase the maximum administrative penalty from \$25,000 to \$40,000 per day for each violation after the second violation.

The bill would add statute authorizing TCEQ to hold public meetings virtually and 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.

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 for concrete batch plant operations related to a public works project. The newly created permit would be governed by the existing environmental regulations applied to permeant concrete batch plants. The bill would set a limit of one year for the temporary permit and only allows the permit to be renewed once. 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 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, this analysis assumes the agency would also require \$100,000 in fiscal year 2024 to support improvements to its information technology interface to support posting electronic notices on its website, providing email notices to stakeholders, and hosting virtual meetings related to those permits. Based on 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 information provided, to implement provisions of the bill requiring TCEQ to consider all violations of all severities when determining repeat violators, the agency would require \$15,000 in fiscal year 2024 to update its existing database to capture these additional violations.

Based on information provided, creating an enforcement diversion program for small businesses and local governments would require \$80,000 in fiscal year 2024 to update its 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.

For the purposes of its analysis, SAC provided an estimated revenue gain based on a set penalty matrix established by TCEQ that ties all violation types to a percentage of the statutory maximum penalty. In calculating its estimate, SAC assumed a 60.0 percent increase to penalties assessed over the previous 5 years fiscal year 2018 to fiscal year 2022 and calculated an average increase of \$7,670,000 per fiscal year.

## 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, DKN, CMA, KDw, MW, SD