

HOUSE
STUDY
GROUP

bill analysis

4/5/79

(reprinted
4/10/79)

HB 726
Von Dohlen, et. al.
(CSHB 726 by Von Dohlen)

SUBJECT: Air quality control

COMMITTEE: Environmental Affairs: committee substitute recommended

VOTE: 7 ayes--Bock, Smith, Allee, Jerry Clark, Collazo, Robnett,
Von Dohlen

1 nay--Watson

0 present, not voting

3 absent--Agnich, Bird, Sullivant

WITNESSES: For--Bill Stewart, Executive Director of the Texas Air
Control Board (TACB); Alex D. Opiela, Jr., Deputy
Director of the TACB; Allen Eli Bell, Legal Counsel
of the TACB

Against--NONE [No witnessess testified against HB 726
at the public hearing. However, several
individuals and organizations which oppose
portions of the bill have subsequently
submitted statements to the Harris County
Delegation. These opponents include Joe
Pirtle, mayor of Seabrook; Galveston Bay
Conservation and Preservation Association;
Robert T. Savely, Clear Lake Civic Association;
and Tom Bass, Harris County Commissioner.]

On--David K. Lacker, Director of Occupational Health
and Radiation Control of the Texas Department of Health

BACKGROUND: The 1977 Federal Clean Air Act Amendments require states
to address a number of issues in their State Implementation
Plans. Failure to do so can result in the loss of federal
funds. Please refer to House Study Group Special Legislative
Report Number 25 of March 21, 1978, for a discussion of
the impact of the Clean Air Act Amendments on the state.

DIGEST: This bill makes a number of changes in the Texas Clean
Air Act. It authorizes the TACB to conduct a voluntary
pilot program of vehicle inspection and maintenance in
Harris and surrounding counties. The TACB is to evaluate
motor vehicle inspection and maintenance programs and report
to the 67th Legislature its findings on the feasibility of
a permanent program in Texas.

DIGEST
(continued)

The bill adds "radioactive material" to the list of air pollutants that the TACB may regulate. It also changes the composition of the TACB so that a majority of its nine members represent the public interest. The bill further provides that public members may not get a "significant portion" of their income from sources regulated by the TACB. It removes the requirement that the TACB consider a number of factors in issuing permits. The bill allows the TACB to collect fees for permits.

PRO:

This bill is the best way to assure that the state can retain its authority to regulate air pollution in Texas. It both meets the requirements of the Federal Clean Air Act Amendments and preserves the state's options in carrying out those requirements. The state, not the federal government, is in the best position to determine the types of controls needed to protect public health and improve air quality.

The pilot program of vehicle maintenance and inspection gives the state the time and means to evaluate a federal regulatory proposal. The 67th Legislature can determine if such a program improves air quality and can decide whether a mandatory program is in the best interests of the people of Texas.

Some believe that the public won't participate in a voluntary vehicle inspection and maintenance program. There is an incentive for motorists to participate in the program, however. Emission reductions credited to the pilot program will allow for new growth in Harris and surrounding counties.

The change in the composition of the membership of the TACB is necessary to meet the requirements of the Federal Clean Air Act Amendments. Further, it ensures that a majority of the board will represent the public interest. The conflict of interest provision for public members ensures that the TACB will make decisions that are best for the people of Texas.

The bill also clarifies the TACB's regulatory authority in granting permits. It makes it clear that its authority does not extend to land use considerations. The TACB is in the business of regulating air quality, not land use. That needs to be made clear.

The removal of the list of "facts and circumstances" that TACB must consider when granting permits is also a good idea. Once standards are issued, no facility violating them should get a permit. Telling TACB to consider vague factors such as "social and economic value" would only confuse things. It might even encourage TACB to grant permits to bad polluters on the grounds of overriding social or economic need.

PRO
(continued)

It is only reasonable that the TACB be authorized to charge fees for permit and variance applications. The TACB spends money to review and act on these applications; these costs should be passed on to the applicant rather than being paid by taxpayers.

CON:

Two sections of this bill are completely unnecessary to meet the requirements of the federal Clean Air Act. In fact, they weaken the Texas Clean Air Act considerably. The TACB currently has to consider a number of facts and circumstances when it makes determinations about the reasonableness of any emissions. The considerations include the "character and degree of injury to, or interference with, the health and physical property of the people" Section 7 of this bill says that the TACB has to continue to do that except when new facilities seek construction and operating permits. The result of the change is that new growth and pollution will be allowed with no consideration of its effect on the public.

Section 8 of the bill removes the requirement that the TACB make a proper consideration of land use before it issues a permit to construct or modify a polluting facility. It's essential to keep that requirement. The TACB is supposed to protect the public health; part of that responsibility is to check the location of polluting facilities. Even if a facility meets air quality guidelines, its location may not be desirable. A chemical plant doesn't belong next to a school. The state has a responsibility to ensure that this does not happen. This bill removes TACB's responsibility in this area.

COMMENTARY:

CSHB 726 is a combination of two pieces of legislation, HB 726 & HB 2128. HB 2138 contained the vehicle inspection and maintenance program and the legislative policy and intent now found in the first two sections of CSHB 726. HB 726 contained the rest of the changes in the substitute measure.

Fees charged by the TACB for application and variance permits may be no less than \$50 nor more than \$7500.

The TACB adopted the State Implementation Plan on March 30 and sent it to the Governor for formal submission to the Environmental Protection Agency. Preliminary indications are that the EPA will approve the plan contingent upon the adoption of legislation such as CSHB 726.

A number of amendments are expected to be offered to the bill. Most are aimed at Sections 7 and 8 to preserve the current language in the Texas Clean Air Act.

COMMENTARY
(continued)

In its Interim Report to the 66th Legislature, the Select Committee on Offset Emission Standards recommended legislation to change the composition of the TACB and grant it authority to charge fees for permits and to regulate radioactive air contaminants. The committee did not recommend a vehicle inspection and maintenance program but said if such a program is implemented, it should be done on a statewide basis.

The pilot program for vehicle inspection and maintenance will be paid for by the Environmental Protection Agency. The section of the bill authorizing the pilot program and its evaluation will become effective upon approval by the EPA of the provisions of the State Implementation Plan that relate to vehicle inspection and maintenance.