

**SUBJECT:** Barring TNRCC rules stricter than federal regulations

**COMMITTEE:** Natural Resources — favorable, with amendment

**VOTE:** 7 ayes — Counts, Yost, Combs, King, R. Lewis, Stiles Walker  
0 nays  
2 absent — Corte, Puente

**WITNESSES:** For — Ronald E. Hudson, City of Houston; Monte Akers, Texas Municipal League; Bill Powers, Texas Farm Bureau; Jack Fickessen, Texas Water Partnership  
Against — None

**BACKGROUND:** Water Code sec. 5.103 governs the rulemaking authority of the Texas Natural Resource Conservation Commission (TNRCC) under Water Code Subchapter D, which lays out the general powers and duties of the commission.

**DIGEST:** HB 2843, as amended, would amend Water Code, sec. 5.103 to prohibit TNRCC from adopting a new rule or amending an existing rule to create a rule more stringent than federal regulation of the same matter unless:

- there was no applicable federal regulation;
- the rule or amendment was necessary to address an environmental condition unique to the state or
- the applicable federal regulation was substantially inadequate to provide necessary protection for the state’s environment.

If TNRCC proposed a rule or amendment more stringent than a federal regulation that governed the same matter, TNRCC would be required to publish, along with the new rule, a detailed statement of the grounds for the commissions’s determination that the more stringent state rule was necessary, appropriate and authorized by Water Code sec. 5.103 (d)

TNRCC would be required, within six months of the effective date of the bill, to adopt an order listing the commission rules in effect on September 1, 1995, that TNRCC determined to be more stringent than federal regulations but that met one of the exceptions. Each rule listed would have to include a detailed statement of the grounds for the determination of the necessity of a more stringent rule.

A TNRCC rule more stringent than a federal regulation in effect on September 1, 1995, and not listed in the TNRCC's order, would expire on the date the final rule adopting the order would take effect. The bill would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

HB 2843 would ensure consistency in federal and state regulations. It is expensive, time-consuming and confusing for regulated entities, large and small, to sift through two sets of sometimes inconsistent regulations and try to comply with both. Not knowing what requirements the state might impose in the future makes long-range planning impossible.

TNRCC should never need to add unnecessary and often duplicative state requirements on top of federal ones. If, for some reason, TNRCC needed flexibility to respond to a local or emergency situation, address an environmental condition unique to the state or provide necessary protection to the environment, the bill would allow the agency to do just that.

Both businesses and cities in Texas often spend time and money struggling to obtain two sets of permits (one from the federal Environmental Protection Agency and one from TNRCC) for the same regulated activity. This often involves hiring two different sets of lawyers and consultants.

HB 2843 would help attract businesses to Texas and encourage those already here to stay by promoting regulatory order. Federal rules are very strict in protecting the health and welfare of the public, and state rules need be no stricter. Most neighboring states do not promulgate regulations more stringent than federal requirements and thus gain a competitive edge over Texas in attracting business and economic development. It would be economically advantageous for Texas to conform to the national standards, with which most businesses are already familiar. Businesses are wary of

having to comply with a confusing patchwork of state and federal regulations and double permitting requirements.

OPPONENTS  
SAY:

This bill would unwisely tie the hands of state agencies responsible for protecting the environment and public health and safety. Arbitrarily forbidding rules stricter than national standards to protect the health and safety of the public and the environment would curtail the ability of state agencies to respond to local problems or emergencies. In the past, TNRCC has promulgated few if any rules stricter than national standards.

There is no reason to bind the state to standards set by the federal government. Since Texas is always trying to convince the federal government to grant the state local control over its unique natural resources, it would be unwise to voluntarily surrender precious local control to federal bureaucrats. TNRCC rules are developed with the participation of Texas residents through public hearings, and are often revised to reflect public comment. There is little chance for Texans to have federal rules modified.

It would be extremely time-consuming and staff-intensive for TNRCC to inventory existing regulations to see whether or not they are more stringent than federal regulations, but the bill appropriates no money for the task. TNRCC would have to pull staff out of critical program areas in order to comply with the bill.

NOTES:

The committee amendment corrected a drafting error in the bill.

HB 2349 by Kuempel, prohibiting TNRCC from imposing sanitary landfill standards more stringent than federal standards, was passed by the House by nonrecord vote on April 28, and referred to the Senate Natural Resources Committee on May 2.