

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1591
By: Haywood
Natural Resources
4-4-97
Committee Report (Substituted)

DIGEST

Currently, the United States Environmental Protection Agency (EPA) has proposed a "Project XL," which is advertised to allow companies to seek alternatives to current laws and regulations in return for a higher standard of environmental performance. However, one major problem with EPA's approach is that there is no statutory authority for EPA to waive existing laws. EPA does not presently plan to seek such authority, and companies are uncomfortable with EPA's offer of compliance agreements or on-site specific rules. In addition, Texas presently regulates minor new sources of air emissions in a more stringent manner than federal law, which has raised concerns in negotiations with EPA over delegation of the federal Title V air-permitting program. This legislation provides specific statutory authorization for state programs which exceed federal law to serve as models for regulatory flexibility. This authorization is important for delegation of the federal Title V air-permitting program to Texas, so Texas can allow flexibility in those areas where Texas law exceeds federal law. C.S.S.B. 1591 will also prove helpful if the U.S. Congress authorizes a federal program.

PURPOSE

As proposed, C.S.S.B. 1591 establishes the authority of the Texas Natural Resource Conservation Commission regarding pollution control or abatement flexibility.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Sections 5.123(a), (b), and (d), Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 5D, Water Code, by adding Section 5.123, as follows:

Sec. 5.123. REGULATORY FLEXIBILITY. Authorizes the Texas Natural Resource Conservation Commission (commission), by order, to exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is at least as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply, and is not inconsistent with federal law. Requires the commission, by rule, to specify the procedure for obtaining an exemption. Requires the rules to provide for public notice and for public participation in a proceeding involving an application for an exemption. Requires the commission's order to provide a specific description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes. Authorizes the commission, by rule, to establish a reasonable fee for applying for an exemption. Provides that a violation of an order is punishable as if it were a violation of the statute or rule from which the order grants an exemption.

SECTION 2. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 5.123, Water Code, to replace all references to "a commission rule" with "a statute or commission rule."

Authorizes the commission, by order, to exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by applying an alternative method that is not inconsistent with federal law, rather than a method that is consistent with state and federal law.

Requires the rules specifying the procedure for obtaining an exemption to provide for public notice, rather than notice to affected persons, and public participation in a proceeding involving an application for an exemption.