

## **BILL ANALYSIS**

Senate Research Center

H.B. 2912  
By: Bosse (Harris)  
Natural Resources  
5/2/2001  
Engrossed

### **DIGEST AND PURPOSE**

The Texas Natural Resource Conservation Commission (TNRCC) protects the state's natural resources and human health by ensuring clean air, clean water, and the safe management of waste. The legislature created the agency in 1993, by consolidating the Texas Water Commission, Texas Air Control Board, and environmental programs from the Texas Department of Health. The agency implements state and federal environmental regulatory laws by issuing permits and authorizations for the control of air pollution, the safe operation of water and wastewater facilities, and the treatment, storage, and disposal of hazardous, industrial, municipal, and low-level radioactive waste. TNRCC ensures compliance with environmental laws by conducting inspections of regulated facilities, monitoring air and water quality, providing technical assistance, encouraging voluntary compliance, and taking formal enforcement action against suspected violators. The agency also develops programs for the cleanup and eventual reclamation of contaminated industrial and abandoned hazardous waste sites.

TNRCC is subject to the Texas Sunset Act and will be abolished September 1, 2001 unless it is continued by the legislature. In its review of TNRCC, the Sunset Advisory Commission (commission) found that the traditional, prescriptive regulatory approach focuses on outputs and does not adequately support innovation, provide incentives to reward performance, or solve persistent environmental problems. The commission also found that TNRCC lacks tools needed to better support its environmental protection mission and that additional changes are needed to ensure greater public access to the agency's decision making process. The commission's recommendations would give regulated entities a larger stake in and enable all affected groups to take a greater role in protecting the environment. H.B. 2912 continues TNRCC for 12 years and contains the commission's recommendations to better position the agency to address the state's environmental regulatory needs.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTIONS 1.12 (Sections 5.127 and 5.129, Water Code), 1.19 (Section 5.228, Water Code), 1.23 (Section 7.0025, Water Code), 2.13 (Section 5.662, Water Code), 2.16 (Section 5.6645, Water Code), 4.01 (Sections 5.752, 5.754, 5.756 and 5.757 Water Code), 4.06 (Section 382.0216, Health and Safety Code), 4.08 (Sections 382.05183, 382.05184, 382.05185, 383.05186, Health and Safety Code), 4.12 (Section 382.065, Health and Safety Code), 5.01 (Sections 5.802 and 5.803, Water Code), 6.01 (Section 341.102, Article 6243-101, V.T.C.S.), 7.03 (Section 366.076, Health and Safety Code), 8.01 (Section 361.114, Health and Safety Code), 8.02 (Section 361.119, Health and Safety Code), 11.02 (Section 26.503, Water Code), 15.03 (Sections 382.154 and 382.155, Health and Safety Code), 17.18 (Section 361.079, Health and Safety Code), 17.22 (Section 361.082, Health and Safety Code), 17.25 (Section 361.089, Health and Safety Code), 19.05, 19.08, 19.10, and 19.11. Rulemaking authority is granted to the Texas Department of Health in SECTION 2.25 (Section 5.673, Health and Safety Code).

### **SECTION BY SECTION ANALYSIS**

SECTION 1.01. Amends Section 5.014, Water Code, as follows:

Sec. 5.014. SUNSET PROVISION. Provides that unless in existence as provided by that chapter, the Texas Natural Resource Conservation Commission (commission) is abolished and this chapter expires September 1, 2013, rather than 2001.

SECTION 1.02. Amends Section 5.052(c), Water Code, to require appointments to the commission to be made without regard to certain factors.

SECTION 1.03. Amends Section 5.053(a), Water Code, to prohibit a person from being a member of the commission if the person or the person's spouse meets certain criteria. Deletes text regarding eligibility to serve on the commission.

SECTION 1.04. Amends Chapter 5C, Water Code, by adding Section 5.0535, as follows:

Sec. 5.0535. REQUIRED TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) Prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Provides that a person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 1.05. Amends Section 5.054, Water Code, as follows:

Sec. 5.054. (a) Provides that it is a ground for removal from the commission that, rather than if, a member meets certain conditions.

(b) Makes conforming changes.

(c) Requires the executive director, if the executive director or a member has knowledge that a potential ground for removal exists, to notify the presiding officer, rather than chairman, of the commission of the potential ground. Requires the presiding officer, rather than chairman of the commission, to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director or another member of the commission, if the potential ground for removal involves the presiding officer, to notify the member of the commission with the most seniority, who will then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 1.06. Amends Sections 5.058(a)-(d), Water Code, as follows:

(a) Requires the governor to designate a member of the commission as the presiding officer, rather than chairman, of the commission to serve in that capacity at the pleasure of the governor. Deletes text regarding chairman.

(b) Authorizes the presiding officer to designate another commissioner to act for the presiding officer in the presiding officer's absence. Makes conforming and nonsubstantive changes.

(c) Makes a conforming change.

(d) Makes conforming changes.

SECTION 1.07. Amends Sections 5.059 and 5.060, Water Code, as follows:

Sec. 5.059. Defines "Texas trade association." Prohibits a person from being a member of the commission and being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if certain conditions exist. Deletes text regarding certain persons affiliated with a trade association.

Sec. 5.060. Prohibits a person from being a member of the commission or acting as general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because, rather than by virtue, of the person's activities for compensation on behalf of a profession related to the operation of the commission. Deletes text regarding certain persons serving on the commission. Makes conforming and nonsubstantive changes.

SECTION 1.08. Amends Chapter 5D, Water Code, by adding Section 5.1031, as follows:

Sec. 5.1031. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING PROHIBITED. (a) Prohibits the commission from adopting rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) Prohibits the commission, in its rules to prohibit false, misleading, or deceptive practices, from including a rule that meets certain conditions.

SECTION 1.09. Amends Section 5.107, Water Code, as follows:

Sec. 5.107. New heading: ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES. (a) Authorizes the commission or the executive director to create and consult with groups for certain purposes.

(b) Requires the commission to identify affected groups of interested persons for advisory committees, work groups, and task forces and to make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces. Provides that this subsection does not require the commission to ensure that all representatives attend a scheduled meeting. Prohibits a rule or other action of the commission from being challenged solely because of the composition of an advisory committee, work group, or task force.

(c) Requires the commission to monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and to maintain that information in a form and location that is easily accessible to the public, including making the information available on the Internet.

SECTION 1.10. Amends Chapter 5D, Water Code, by adding Section 5.1115, as follows:

Sec. 5.1115. RECORD OF OUTSIDE CONTACT BY COMMISSION MEMBER OR STAFF. (a) Requires each commission member and each commission staff member with discretionary authority over any aspect of a permit or enforcement decision, rulemaking, or other regulatory matter pending before or within the jurisdiction of the commission to keep a written record of each communication with any person other than a commission member or commission employee regarding that regulatory matter. Provides that a commission member or commission employee has discretionary authority if the person has authority to make a decision that is final regarding that regulatory matter.

(b) Requires the written record to state certain information.

(c) Provides that a written record prepared as required by this section is subject to disclosure under the public information law, Chapter 552 (Public Information), Government Code.

(d) Provides that this section does not apply to an unplanned communication that occurs outside commission offices.

(e) Requires the written record, if the communication occurs as part of a presentation to a group or association, to include the name of the group or association instead of the information required by Subsections (b)(1)-(3).

SECTION 1.11. Amends Chapter 5D, Water Code, by adding Sections 5.1191-5.1193, as follows:

Sec. 5.1191. RESEARCH MODEL. (a) Defines "research model." Requires the commission's plan to be prioritized by need and to identify certain research goals. Authorizes the plan to address preferred methods of conducting the identified research.

(b) Requires the commission to develop a research model. Authorizes the commission to appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate in developing the research model and to make recommendations regarding research topics specific to this state. Requires the research advisory board to include certain persons.

Sec. 5.1192. COORDINATION OF RESEARCH. (a) Requires the commission to facilitate and coordinate environmental research in the state according to the research model developed under Section 5.1191.

(b) Requires the commission to explore private and federal funding opportunities for research needs identified in the research model. Authorizes the commission to conduct, direct, and facilitate research to implement the commission's research model by administering grants or by contracting for research if money is appropriated to the commission for those purposes.

(c) Requires the commission, through the research model, to coordinate with or make use of any research activities conducted under existing state initiatives, including research by certain state entities.

(d) Provides that this section does not authorize the commission to initiate or direct the research efforts of another entity except under the terms of a grant or contract.

Sec. 5.1193. REPORT. Requires the commission to include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and results of particular research projects conducted.

SECTION 1.12. Amends Chapter 5D, Water Code, by adding Sections 5.127-5.130, as follows:

Sec. 5.127. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS. (a) Authorizes the commission to accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing

laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b).

(b) Authorizes the commission to accept for use in commission decisions data and analysis prepared by certain entities.

(c) Authorizes the commission by rule to require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

Sec. 5.128. ELECTRONIC REPORTING TO COMMISSION; REDUCTION OF DUPLICATE REPORTING. (a) Requires the commission to encourage the use of electronic reporting through the Internet, to the extent practicable, for reports required by the commission. Requires an electronic report to be submitted in a format prescribed by the commission. Authorizes the commission to consult with the Department of Information Resources on developing a simple format for use in implementing this subsection.

(b) Requires the commission to strive to reduce duplication in reporting requirements throughout the agency.

Sec. 5.129. SUMMARY FOR PUBLIC NOTICES. (a) Requires the commission by rule to provide for each public notice issued or published by the commission or by a person under the jurisdiction of the commission as required by law or by commission rule to include at the beginning of the notice a succinct statement of the subject of the notice. Requires the rules to provide that a summary statement be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice.

(b) Prohibits the summary statement from being grounds for challenging the validity of the proposed action for which the notice was published.

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. Requires the commission to perform certain duties.

SECTION 1.13. Amends Chapter 5E, Water Code, by adding Section 5.1765, as follows:

Sec. 5.1765. PUBLICATION OF INFORMATION REGARDING COMPLAINT PROCEDURES AND POLICIES. Requires the commission to establish a process for educating the public regarding the commission's complaint policies and procedures. Requires the commission, as part of the public education process, to make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public.

SECTION 1.14. Amends Sections 5.176 and 5.177, Water Code, as follows:

Sec. 5.176. (a) Requires the commission to maintain a, rather than keep an information, file on each written complaint filed with the commission about a matter within the commission's regulatory jurisdiction. Deletes text regarding entity regulated by the commission. Requires the files to include certain information.

(b) Requires the commission to establish and implement procedures for receiving complaints submitted by means of the Internet and orally and to maintain files on those complaints as provided by Subsection (a).

Sec. 5.177. New heading: NOTICE OF COMPLAINT PROCEDURES; NOTICE OF

INVESTIGATION STATUS. (a) Requires the agency to provide to the person filing the complaint about a matter within the commission's regulatory jurisdiction and to each person who is the subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(b) Requires the commission, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of, rather than parties to, the complaint the of the status of the investigation, rather than complaint, unless the notice would jeopardize an undercover investigation. Deletes text regarding written complaint.

(c) Provides that the commission is not required to provide the information described in Subsection (a) or (b) to a complainant who files an anonymous complaint or provides inaccurate contact information.

SECTION 1.15. Amends Chapter 5E, Water Code, by adding Sections 5.1771, 5.1772, and 5.1773, as follows:

Sec. 5.1771. COORDINATION OF COMPLAINT INVESTIGATIONS WITH LOCAL ENFORCEMENT OFFICIALS: TRAINING. (a) Requires the commission to share information regarding a complaint about a matter within the commission's regulatory jurisdiction made to the commission with local officials with authority to act on the complaint in the county or municipality in which the alleged action or omission that is the subject of the complaint occurred or is threatening to occur.

(b) Requires the commission, on request, to provide training for local enforcement officials in investigating complaints and enforcing environmental laws relating to matters under the commission's jurisdiction under this code or the Health and Safety Code. Requires the training to include certain information.

(c) Authorizes the commission to charge a reasonable fee for providing training to local enforcement officials as required by Subsection (b) in an amount sufficient to recover the costs of the training.

Sec. 5.1772. AFTER-HOURS RESPONSE TO COMPLAINTS. (a) Requires the commission to adopt and implement a policy to provide timely response to complaints during periods outside regular business hours.

(b) Provides that this section does not require availability of field inspectors for response 24 hours a day, seven days a week, in all parts of the state; or authorize additional use of overtime.

Sec. 5.1773. COMPLAINT ASSESSMENT. (a) Requires the commission annually to conduct a comprehensive analysis of the complaints it receives, including analysis of certain categories.

(b) Requires the commission, in addition to the analysis required by Subsection (a), to assess the impact of changes made in the commission's complaint policy.

SECTION 1.16. Amends Section 5.178(b), Water Code, to require the report due by December 1 of an even-numbered year to include certain information.

SECTION 1.17. Amends Section 5.227, Water Code, to require the executive director of his designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions, rather than transactions, are made without regard to

certain factors. Makes conforming changes. Requires the policy statement to include certain information. Deletes text regarding procedures and reasonable methods. Requires the policy statement to meet certain conditions.

SECTION 1.18. Amends Chapter 5F, Water Code, by adding Section 5.2275, as follows:

Sec. 5.2275. STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108(B), Government Code.

SECTION 1.19. Amends Section 5.228, Water Code, as follows:

(b) Requires the executive director to be named a party in hearings before the commission on an enforcement matter under the jurisdiction of the commission.

(c) Authorizes the executive director to participate as a party in permit hearings or contested case permit hearings before the commission or the State Office of Administrative Hearings for the sole purpose of providing information to complete the administrative record. Requires the commission by rule to specify the factors the executive director must consider in determining, case by case, whether to participate as a party in a permit hearing or a contested case permit hearing. Requires the commission to consider to perform certain procedures.

(d) Prohibits the executive director or the executive director's designated representative, in a contested case hearing relating to a permit application, from rehabilitating the testimony of a witness unless the witness is a commission employee testifying for the sole purpose of providing information to complete the administrative record.

(e) Prohibits the executive director or the executive director's designated representative from assisting a permit applicant in meeting its burden of proof in a hearing before the commission or the State Office of Administrative Hearings unless the permit applicant fits a category of permit applicant that the commission by rule has designated as eligible to receive assistance. Requires the commission to adopt rules establishing categories of permit applicants eligible to receive assistance.

SECTION 1.20. Amends Chapter 5F, Water Code, by adding Section 5.2291, as follows:

Sec. 5.2291. SCIENTIFIC AND TECHNICAL SERVICES. (a) Defines "scientific and technical environmental services."

(b) Authorizes the procurement of a contract for scientific and technical environmental services to be conducted under the procedures for professional services selection provided in Chapter 2254A, Government Code, if the executive director determines there is a compelling public need to do so.

SECTION 1.21. Amends Section 5.234(b), Water Code, as follows:

(b) Requires the executive director, if, in the course of reviewing an application and preparing a draft permit, the executive director has required changes to be made to the applicant's proposal, to prepare a summary of the changes that were made to increase protection of public health and the environment.

SECTION 1.22. Amends Chapter 5G, Water Code, as follows:

SUBCHAPTER G. New heading: OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL

Sec. 5.271. New heading: DEFINITIONS. Defines “counsel,” “office,” and “public interest.”

Sec. 5.272. New heading: CREATION AND GENERAL RESPONSIBILITY OF OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL. Provides that the Office of Natural Resource Public Interest Counsel is created to ensure that the public interest is represented in all matters before the commission.

Sec. 5.273. New heading: NATURAL RESOURCE PUBLIC INTEREST COUNSEL. (a) Requires the governor with the advice and consent of the senate to appoint a natural resource public interest counsel to serve as the executive director of the office.

(b) Requires a person, to be eligible to serve as counsel, to meet certain conditions.

(c) Provides that the counsel serves a two-year term that expires February 1 of each odd-numbered year.

(d) Authorizes the counsel to serve on a board, committee, or advisory group unless prohibited by law.

Sec. 5.274. New heading: POWERS AND DUTIES OF COUNSEL AND COMMISSION. (a) Authorizes the counsel to represent the public interest in any issue that arises in a proceeding before the commission. The counsel is entitled to be admitted as a party to any proceeding before the commission.

(b) Requires the counsel to perform certain procedures.

(c) Provides that the counsel is responsible for approving actual and necessary expenditures incurred in administering the office, including expenses for professional services, travel, and per diem payments.

(d) Authorizes the counsel to perform certain duties.

(e) Requires the counsel to participate in a meeting of any of the commission's advisory committees when necessary to ensure that the committee considers the public interest perspective.

(f) Requires the commission to provide the counsel a copy of each notice related to a matter under the jurisdiction of the commission that is required by statute or commission rule to be mailed, published, or posted in any manner by the commission or another person.

(g) Requires the commission to give the office access to the commission's technical staff and resources to assist the counsel in a proceeding before the commission. Provides that the commission is not required to give the office access to a technical staff member if the staff member is expected to participate in the proceeding on the commission's behalf.

Sec. 5.275. New heading: REPRESENTATION BY FORMER COUNSEL; PENALTY.

(a) Prohibits a former counsel from making any communication to or appearance before the commission or an officer or employee of the commission before the second anniversary of the date the person ceases to serve as counsel if the communication or appearance is made under certain conditions.



(b) Prohibits a former counsel from representing any person or receive compensation for services rendered on behalf of any person regarding a matter before the commission before the second anniversary of the date the person ceases to serve as counsel.

(c) Provides that a person commits an offense if the person violates this section. Provides that an offense under this subsection is a Class A misdemeanor.

Sec. 5.276. New heading: JUDICIAL REVIEW AND APPEAL. Authorizes the counsel to appeal on behalf of the public an action taken by the commission in a proceeding in which the counsel participated. Authorizes the counsel to intervene as a matter of right or appear in any other appropriate capacity in a judicial proceeding that arises out of a commission proceeding in which the counsel participated.

Deletes existing text of Sections 5.271-5.275.

SECTION 1.23. Amends Chapter 7A, Water Code, by adding Section 7.0025, as follows:

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) Authorizes the commission to initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on information it receives from a private individual if that information, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(b) Authorizes the executive director or the executive director's designated representative to evaluate the value and credibility of information received from a private individual and the merits of any proposed enforcement action based on that information.

(c) Authorizes the commission by rule to adopt criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.

(d) Authorizes a private individual who submits information on which the commission relies for all or part of an enforcement case to be called to testify in the enforcement proceedings. Provides that if the commission relies solely on the information submitted by a private individual to prove an enforcement case, any physical or sampling data is required to have been collected or gathered in accordance with commission protocols.

SECTION 1.24. Amends Section 361.0231(a), Health and Safety Code, to delete text regarding encourage economic development.

SECTION 1.25. Amends Section 26.003, Water Code, to delete text regarding economic development. Makes a conforming change.

SECTION 1.26. Amends Section 27.003, Water Code, to make conforming changes.

## ARTICLE 2. NOTICE REQUIREMENTS

SECTION 2.01. Amends Chapter 5, Water Code, by adding a heading for Subchapter O, as follows:

### SUBCHAPTER O. NOTICE REQUIREMENTS

SECTION 2.02. Amends Section 5.115, Water Code, transferring new Chapter 5O, Water Code,

redesignating as Section 5.651, as follows:

Sec. 5.651. New heading: PERSONS AFFECTED IN COMMISSION HEARINGS;  
NOTICE OF APPLICATION FOR PERMIT OR LICENSE.

SECTION 2.03. Amends Sections 11.085(f)-(i), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.652, as follows:

Sec. 5.652. NOTICE OF APPLICATION FOR INTERBASIN TRANSFER. (a) Requires that notice of an application for an interbasin transfer under Section 11.085 to be mailed to certain persons or groundwater conservation districts.

(c) Requires the notice of application to state how a person may obtain the information described by Section 11.085(b).

SECTION 2.04. Amends Sections 11.132(a)-(c), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.653, as follows:

Sec. 5.653. NOTICE OF PROPOSED APPROPRIATION OF WATER. (a) Requires notice to be given to the persons who in the judgment of the commission may be affected by an application for authorization to appropriate unappropriated state water under Chapter 11, including those persons listed in Section 5.654(b). Deletes text regarding the commission holding a public hearing.

SECTION 2.05. Amends Sections 11.132(d) and (e), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.654, as follows:

Sec. 5.654. NOTICE REQUIRED TO OBTAIN AUTHORIZATION TO APPROPRIATE WATER WITHOUT HEARING. (a) Requires the applicant, not later than 30 days, rather than not less than 30 days, before the date of action by the commission on an application for authorization to appropriate unappropriated state water under Chapter 11, rather than by the commission, to publish the commission's notice of the application under Section 5.653 at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located. Deletes text regarding the commission is prohibited from acting on an application. Makes conforming changes.

(b) Requires the commission not later, rather than not less, than 30 days before the date of action on the application by the commission, to mail a copy of the notice by first-class mail, postage prepaid, to certain persons or entities.

(c) Makes conforming changes.

SECTION 2.06. Amends Sections 11.143(e) and (f), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.655, as follows:

Sec. 5.655. NOTICE OF APPLICATION AND OF HEARING ON APPLICATION FOR PERMIT TO USE DOMESTIC AND LIVESTOCK RESERVOIR FOR OTHER PURPOSES. (a) Requires the commission to give notice of an application for a permit to use water from a dam or reservoir exempted under Section 11.142 for a purpose other than domestic or livestock use as provided by this section.

SECTION 2.07. Amends Sections 11.143(d), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.656, as follows:

Sec. 5.656. NOTICE REQUIRED TO OBTAIN A PERMIT WITHOUT HEARING TO

USE DOMESTIC AND LIVESTOCK RESERVOIR FOR OTHER PURPOSES. (a) Requires the applicant, not later, rather than not less, than 30 days before the date of action by the commission on an application to obtain a permit under Section 11.143 to use water from a dam or reservoir exempted under Section 11.142 for a purpose other than domestic or livestock use, to publish the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located.

(b) Makes conforming changes. Deletes text regarding public hearing.

SECTION 2.08. Amends Sections 11.175, Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.657, as follows:

Sec. 5.657. New heading: NOTICE OF CANCELLATION PROCEEDING. (a) Requires the commission, at least 45 days before the date of a hearing on the proposed cancellation of a permit, certified filing, or certificate of adjudication under Section 11.176, to send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation in whole or in part.

SECTION 2.09. Amends Sections 26.022(b) and (c), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.658, as follows:

Sec. 5.658. NOTICE OF HEARINGS HELD UNDER CHAPTER 26. (a) Requires notice of all hearings held under Chapter 26, except as otherwise provided by Sections 5.501, 5.504, 5.509, and 26.176, to be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, the commission has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing.

(b) Requires the notice, if notice of the hearing is required by Chapter 26 to be given to a person, to be served personally or mailed not less than 20 days before the date set for the hearing to the person at his last address known to the commission.

SECTION 2.10. Amends Sections 26.028(a), (b), and (e), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.659, as follows:

Sec. 5.659. NOTICE TO AFFECTED PERSONS OF APPLICATION FOR PERMIT, PERMIT AMENDMENT, OR PERMIT RENEWAL UNDER CHAPTER 26. Requires the commission to give notice of an application for a permit, permit amendment, or permit renewal under Chapter 26 to the persons who in the judgment of the commission may be affected by the application, except as provided by this section. Makes conforming changes.

(c) Requires notice of an application under Section 26.028(c) to be mailed to certain persons at least 10 days before the commission meeting. Deletes text regarding presenting information to the commission. Makes a nonsubstantive change.

SECTION 2.11. Amends Sections 26.028(g), Water Code, transferring new Chapter 50, Water Code, redesignated as Section 5.660, as follows:

Sec. 5.660. NOTICE REQUIRED TO OBTAIN PERMIT DECISION WITHOUT HEARING UNDER SECTION 26.028(a). Requires the applicant, not later than 30 days before the date of action by the commission on an application for a permit, permit amendment, or permit renewal under Chapter 26, to publish the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the

proposed facility or discharge is located and in each county affected by the discharge.

(b) Requires the applicant, not later, rather than not less, than 30 days before the date of action on the application by the commission, to serve or mail the commission's notice of the application to persons who in the judgment of the commission may be affected, including the county judges as required by Section 5.659(b). Requires the applicant, as part of the application, to submit an affidavit which lists the names and addresses of the persons who may be affected by the application and include the source of the list. Deletes text regarding application. Makes conforming changes.

SECTION 2.12. Amends Sections 26.040(b), Water Code, transferring new Chapter 5O, Water Code, redesignated as Section 5.661, as follows:

(a) Requires the commission to publish the notice of a proposed general permit to discharge waste into or adjacent to waters in the state under Section 26.040 in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit and in the Texas Register.

SECTION 2.13. Amends Sections 27.018(b), Water Code, transferring new Chapter 5O, Water Code, redesignated as Section 5.662, as follows:

Sec. 5.662. NOTICE OF OPPORTUNITY FOR HEARING ON PERMIT APPLICATION FOR INJECTION WELL TO DISPOSE OF INDUSTRIAL AND MUNICIPAL WASTE. Requires the commission by rule to provide for giving notice of the opportunity to request a public hearing on a permit application for an injection well to dispose of industrial and municipal waste under Chapter 27.

SECTION 2.14. Amends Sections 361.063(c), Water Code, transferring new Chapter 5O, Water Code, redesignated as Section 5.663, as follows:

Sec. 5.663. NOTICE OF INTENT TO FILE APPLICATION FOR HAZARDOUS WASTE PERMIT. Requires the applicant, if an applicant for a permit for a hazardous waste management facility decides to participate in a local review committee process under Section 361.063, Health and Safety Code, to file with the commission a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. Deletes text regarding filing of notice.

SECTION 2.15. Amends Sections 361.0665, Water Code, transferring new Chapter 5O, Water Code, redesignated as Section 5.664, as follows:

Sec. 5.664. NOTICE OF INTENT TO OBTAIN MUNICIPAL SOLID WASTE PERMIT. (a) Requires a person who applies for a municipal solid waste permit to publish notice of intent to obtain a permit under Chapter 361(Solid Waste Disposal Act), Health and Safety Code, at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

SECTION 2.16. Amends new Chapter 5O, Water Code, by adding Section 5.6645, as follows:

Sec. 5.6645. PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES. (a) Requires an applicant for a permit under Chapter 361, Health and Safety Code, for a new facility that accepts municipal solid wastes to hold a public meeting in the county in which the proposed facility is to be located. Requires the meeting to be held before the 45th day after the date the application is filed.

(b) Requires the applicant to publish notice of the public meeting at least once each

week during the three weeks preceding the meeting. Requires the notice to be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. Requires the notice, if a newspaper is not published in the county, to be published in a newspaper of general circulation in the county.

(c) Requires the applicant to present to the commission an affidavit certifying that the notice was published as required by Subsection (b). Provides that the commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).

(d) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain certain information.

(e) Requires the applicant to pay the cost of the notice required under this section. Authorizes the commission by rule to establish a procedure for payment of those costs.

SECTION 2.17. Amends Sections 361.079(a) and (c), Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.665, as follows:

Sec. 5.665. NOTICE OF APPLICATION FOR SOLID WASTE OR HAZARDOUS INDUSTRIAL SOLID WASTE PERMIT. (a) Requires the commission by rule, except as provided by Sections 361.080(b) and 361.081(c), Health and Safety Code, to establish procedures for public notice under Section 361.080 or 361.081, Health and Safety Code.

(b) Makes a conforming change.

SECTION 2.18. Amends Sections 361.0791(e), (f), and (g), Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.666, as follows:

Sec. 5.666. NOTICE OF REQUIRED PUBLIC MEETING ON APPLICATION FOR PERMIT FOR NEW HAZARDOUS WASTE MANAGEMENT FACILITY. (a) Requires an applicant, if a meeting is required under Section 361.0791(a), Health and Safety Code, not less than once each week during the three weeks preceding a public meeting, to publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county.

SECTION 2.19. Amends Sections 361.081(a) and (b), Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.667, as follows:

Sec. 5.667. NOTICE OF HEARING ON APPLICATION FOR SOLID WASTE FACILITY. Requires an applicant to mail notice to each residential or business address located within one-half mile of a new solid waste management facility and to each owner of real property located within one-half mile of a new solid waste management facility listed in the real property appraisal records of the appraisal district in which the solid waste management facility is sought to be permitted under Chapter 361, Health and Safety Code, as of the date the commission determines the permit application is administratively complete.

SECTION 2.20. Amends Sections 361.082(c), Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.668, as follows:

Sec. 5.668. NOTICE OF PUBLIC HEARING ON APPLICATION FOR HAZARDOUS WASTE PERMIT. Requires the commission by rule to establish procedures for public notice

of a public hearing on an application for a hazardous waste permit under Section 361.082, Health and Safety Code. Requires the rules, at a minimum, to include the public notice requirements set forth in Section 5.667, rather than Section 361.081.

SECTION 2.21. Amends Sections 361.089(b) and (c), Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.669, as follows:

Sec. 5.669. NOTICE REGARDING DENIAL OR AMENDMENT OF SOLID WASTE PERMIT. (a) Requires the commission to notify each governmental entity listed under Section 361.067, Health and Safety Code, regarding possible commission action to deny or amend a solid waste permit under Section 361.089, Health and Safety Code. Deletes text regarding opportunity for a hearing to the permit holder. Deletes text regarding as provided by Section 361.110.

(b) Requires the commission by rule to establish procedures for public notice of any public hearing on the denial or amendment of a solid waste permit under Section 361.089, Health and Safety Code. Makes nonsubstantive changes.

SECTION 2.22. Amends Sections 382.017(b), Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.670, as follows:

Sec. 5.670. NOTICE OF HEARING ON ADOPTION OF STATEWIDE RULE RELATING TO AIR POLLUTION. Provides that if a rule adopted under Section 382.017, Health and Safety Code, will have statewide effect, notice of the date, time, place, and purpose of the hearing is required to be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's judgment, give reasonable circulation throughout the state. Makes a nonsubstantive change.

SECTION 2.23. Amends Sections 382.0516, Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.671, as follows:

Sec. 5.671. New heading: NOTICE TO STATE SENATOR AND REPRESENTATIVE OF RECEIPT OF PERMIT APPLICATION FOR A FACILITY THAT MAY EMIT AIR CONTAMINANTS. Makes a conforming change.

SECTION 2.24. Amends Sections 382.055, Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.672, as follows:

Sec. 5.672. NOTICE TO PERMIT HOLDER OF REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT. Requires the commission, not less than 180 days before the date on which an application for renewal of a preconstruction permit is due under Section 382.055, Health and Safety Code, to provide written notice to the permit holder, by registered or certified mail, that the permit is scheduled for review in accordance with this section. Deletes text regarding renewal.

SECTION 2.25. Amends Sections 382.056(a)-(c), (g), and (i), Health and Safety Code, transferring to new Chapter 50, Water Code, redesignated as Section 5.673, as follows:

Sec. 5.673. NOTICE OF INTENT TO OBTAIN PRECONSTRUCTION PERMIT OR PERMIT REVIEW. (a) Makes conforming changes.

(b) Requires the notice to include certain information.

(d) Makes conforming changes. Deletes text regarding public hearing.

(e) Requires the notice to include certain information.

(f) Requires the department to establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(g) This section does not apply to certain criteria.

SECTION 2.26. Amends Sections 382.0561(f), Health and Safety Code, transferring to new Chapter 5O, Water Code, redesignated as Section 5.674, as follows:

Sec. 5.674. NOTICE OF COMMENT PERIOD AND HEARING ON FEDERAL OPERATING PERMIT. Requires notice of the public comment period and opportunity for a hearing on an application for issuance, revision, reopening, or renewal of a federal operating permit under Section 382.0561, Health and Safety Code, to be published in accordance with Section 5.673, rather than 382.056. Makes a nonsubstantive change.

SECTION 2.27. Amends Sections 382.0562, Health and Safety Code, transferring to new Chapter 5O, Water Code, redesignated as Section 5.675, as follows:

Sec. 5.675. New heading: NOTICE OF DECISION ON FEDERAL OPERATING PERMIT. (a) Requires the commission or its designee to send notice of a proposed final action on a federal operating permit under Section 382.0542, Health and Safety Code, by first-class mail to the applicant and all persons who comment during the public comment period or at the public hearing.

(b) Makes a conforming change.

SECTION 2.28. Amends Chapter 5O, Water Code, by adding Sections 5.676 and 5.677, as follows:

Sec. 5.676. NOTICE OF HEARING ON ISSUANCE OR RENEWAL OF LICENSE TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) Requires notice of a hearing on the issuance or renewal of a license to dispose of low-level radioactive waste under Section 401.114 (Notice and Hearing), Health and Safety Code, to be given as provided by this section and Section 401.114, Health and Safety Code.

(b) Requires the commission, in addition to other notice, to publish notice of the hearing in the manner provided by Chapter 313 (Notice For Local and Special Laws), Government Code, in the county in which the proposed facility is to be located. Requires the notice to state the subject and the time, place, and date of the hearing.

(c) Requires the commission to mail, by certified mail in the manner provided by the commission's rules, written notice to each person who owns property adjacent to the proposed site. Requires the notice to be mailed not later than the 31st day before the date of the hearing and to include the same information that is in the published notice. Requires the commission or the applicant, if true, to certify that the notice was mailed as required by this subsection, and at the hearing the certificate is conclusive evidence of the mailing.

Sec. 5.677. NOTICE OF AMENDMENT TO LICENSE TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) Requires the commission to publish notice of an amendment to a license to dispose of low-level radioactive waste under Section 401.116 (License Amendment), Health and Safety Code, once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and to give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license.

- (b) Requires notice under this section to include certain information.

### ARTICLE 3. FEES AND RATES

SECTION 3.01. Amends Chapter 5, Water Code, by adding a heading for Subchapter P, as follows:

#### SUBCHAPTER P. FEES

SECTION 3.02. Amends Section 5.235, Water Code, transferring to new Chapter 5P, Water Code, redesignating as Section 5.701, as follows:

(a) Authorizes the commission by rule to establish, rather than set, the application fee in an amount sufficient to cover, rather than not to exceed, the costs of reviewing and possessing the application, plus the cost of required notice. Authorizes the commission to also use the application fee to cover other costs incurred to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Subsection (p).

(p) Authorizes fees collected for deposit to the water resource management account under the following statutes, notwithstanding any other law, to be appropriated and used to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under certain Subsections or Sections.

(q) Authorizes fees collected for deposit to the water resource management account under the following statutes, notwithstanding any other law, to be appropriated and used to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under certain Subsections or Section.

SECTION 3.03. Amends Chapter 5P, Water Code, by adding Sections 5.702-5.707, to read as follows:

Sec. 5.702. PAYMENT OF FEES REQUIRED WHEN DUE. (a) Requires a fee due the commission under this code or the Health and Safety Code to be paid on the date the fee is due, regardless of whether the fee is billed by the commission to the person required to pay the fee or is calculated and paid to the commission by the person required to pay the fee.

(b) Prohibits a person required to pay a fee to the commission from disputing the assessment of or amount of a fee before the fee has been paid in full.

Sec. 5.703. FEE ADJUSTMENTS. (a) Prohibits the commission from considering adjusting the amount of a fee due the commission under this code or the Health and Safety Code under certain conditions.

(b) Authorizes a person who pays an amount that exceeds the amount of the fee due because the commission incorrectly calculated the fee or the person made a duplicate payment to request a refund of the excess amount paid before the fourth anniversary of the date on which the excess amount was paid.

(c) Requires a request for a refund or credit in an amount that exceeds \$5,000 to be forwarded for approval to the commission fee audit staff, together with an explanation of the grounds for the requested refund or credit. Provides that approval of a refund or credit does not prevent the fee audit staff from conducting a subsequent audit of the person for whom the refund or credit was approved.

Sec. 5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE. Requires the



commission to promptly notify each person required to pay a commission fee under this code or the Health and Safety Code of any change in fee payment procedures.

Sec. 5.705. NOTICE OF VIOLATION. (a) Authorizes the commission to issue a notice of violation to a person required to pay a commission fee under this code or the Health and Safety Code for knowingly violating reporting requirements or knowingly calculating the fee in an amount less than the amount actually due.

(b) Authorizes the executive director to modify audit findings reported by a commission fee auditor only if the executive director provides a written explanation showing good cause for the modification.

Sec. 5.706. PENALTIES AND INTEREST ON DELINQUENT FEES. (a) Authorizes the commission, except as otherwise provided by law, to collect for a delinquent fee due the commission under this code or the Health and Safety Code certain penalties.

(b) Provides that unless otherwise required by law interest accrues, beginning on the 61st day after the date on which the fee was due, on the total amount of fee and penalties that have not been paid on or before the 61st day after the date on which the fee was due. Provides that the yearly interest rate is the rate of interest established for delinquent taxes under Section 111.060 (Interest on Delinquent Tax), Tax Code.

(c) Authorizes the executive director to modify a penalty or interest on a fee and penalties authorized by this section if the executive director provides a written explanation showing good cause for the modification.

(d) Requires penalties and interest collected by the commission under this section or under other law, unless that law otherwise provides, to be deposited to the credit of the fund or account to which the fee is required to be deposited.

Sec. 5.707. TRANSFERABILITY OF APPROPRIATIONS AND FUNDS DERIVED FROM FEES. Authorizes the commission, notwithstanding any law that provides specific purposes for which a fund, account, or revenue source may be used and expended by the commission and that restricts the use of revenues and balances by the commission, to transfer a percentage of appropriations from one appropriation item to another appropriation item consistent with the General Appropriations Act for any biennium authorizing the commission to transfer a percentage of appropriations from one appropriation item to another appropriation item. Prohibits the use of funds in dedicated accounts under this section for purposes in addition to those provided by statutes restricting their use from exceeding seven percent or \$20 million, whichever is less, of appropriations to the commission in the General Appropriations Act for any biennium. Requires a transfer of \$500,000 or more from one appropriation item to another appropriation item under this section to be approved by the commission at an open meeting subject to Chapter 551 (Open Meetings), Government Code.

SECTION 3.04. Amends Section 26.0291, Water Code, as follows:

Sec. 26.0291. New heading: WATER QUALITY FEE. (a) Provides that an annual water quality fee, rather than waste water treatment inspection fee, is imposed on certain user's or permit holder's.

(b) Provides that the fee is to supplement any other funds available to pay expenses of the commission related to certain facilities.

(c) Provides that the fee for each year is imposed on each permit or water right in effect during any part of the year. Authorizes the commission to establish reduced fees for

inactive permits.

(d) Provides that the irrigation water rights are not subject to a fee under this section.

(e) Prohibits the amount of the fee from exceeding \$75,000, rather than \$25,000, for each permit or contract. Deletes text regarding waste discharge and permittee. Prohibits the maximum annual fee under this section for a wastewater discharge or waste treatment facility that holds a water right for the use of water by the facility from exceeding \$75,000. Authorizes the commission, in determining the amount of a fee under this section, to consider certain criteria.

SECTION 3.05. Amends Section 26.0135(h), Water Code, to delete text regarding users of water and wastewater permit holders. Deletes text regarding program funds. Makes conforming changes. Deletes text regarding rules concerning the apportionment and assessment of costs.

SECTION 3.06. Repealer: Section 26.0135(j) (Effect on Other Laws), Water Code.

SECTION 3.07. Amends Section 341.041(a), Health and Safety Code, to require the amount of the fees to be sufficient to cover, rather than may not exceed, the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). Requires the commission to consider equity among persons required to pay the fees as a factor in determining the amount of the fees. Authorizes the commission to also use the fees to cover any other costs incurred to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code. Deletes text regarding costs of public drinking water supply system.

SECTION 3.08. Amends Section 366.058(a), Health and Safety Code, to authorize the commission to also use the fee to cover any other costs incurred to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

SECTION 3.09. Amends Section 366.059(b), Health and Safety Code, to make a conforming change. Deletes text regarding permit fees.

SECTION 3.10. Amends Section 13.187(a), Water Code, to authorize the commission to also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n), rather than 5.235(n), of this code.

#### ARTICLE 4. PERFORMANCE-BASED REGULATION

SECTION 4.01. Amends Chapter 5, Water Code, by adding Subchapter Q, as follows:

##### SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. DEFINITIONS. Defines “flexible permitting,” “innovative regulatory program,” and “permit.”

Sec. 5.752. REGULATORY TIERS AND PERFORMANCE INCENTIVES. (a) Provides that "environmental regulations" include certain criteria.

(b) Requires the commission to develop a strategically directed regulatory structure based on incentives and compliance performance. Requires the commission by rule, to implement this regulatory structure to establish regulatory tiers and performance

incentives in which relative levels of compliance with environmental regulations are used to determine eligibility for participation in innovative regulatory programs.

(c) Requires the rules to define the regulatory tiers in a manner adequate to distinguish certain performers.

(d) Requires the rules to prescribe the programs and incentives available to regulated entities within each regulatory tier and to be revised as necessary to include new programs or incentives as they are developed.

(e) Requires the commission to determine a regulated entity's compliance history, for purposes of eligibility to participate in an innovative regulatory program or incentive, according to the method developed under Section 5.754.

Sec. 5.753. COORDINATION OF INNOVATIVE REGULATORY PROGRAMS AND INCENTIVES. (a) Requires the commission to designate a single point of contact within the agency to coordinate all innovative regulatory programs and incentives.

(b) Requires the designated coordinator to perform certain procedures.

Sec. 5.754. COMPONENTS OF AND STANDARDS FOR EVALUATING COMPLIANCE HISTORY. (a) Requires the commission by rule to develop a single set of components of and standards for evaluating the compliance history of an applicant or permit holder and to consistently apply those components and standards in evaluating compliance history in all permitting and enforcement matters under the commission's jurisdiction.

(b) Provides that the commission to perform certain procedures.

(c) Requires the commission to consider changes in ownership when tracking the compliance history of a regulated entity.

Sec. 5.755. REPORTS. (a) Requires the commission shall collect data on the results of inspections conducted by the commission.

(b) Requires the commission to collect data on and make available to the public on the Internet certain information.

(c) Requires the commission annually to prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission.

(d) Requires the commission to include in the annual enforcement report required by Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997, the comparative performance analysis required by Subsection (b), organized by region and by regulated medium.

Sec. 5.756. PERFORMANCE ASSESSMENT FOR PROGRAM ELIGIBILITY. (a) Requires the commission by rule to develop a method of performance assessment that differentiates persons regulated by the commission according to their compliance histories.

(b) Requires the commission to use the method of performance assessment developed under Subsection (a) in conjunction with the regulatory structure developed under Section 5.752 to determine eligibility for participation in incentive-based programs and other innovative regulatory programs developed by the

commission.

(c) Requires the commission by rule to establish methods of assessing the performance of regulated entities not routinely inspected for compliance. Authorizes the methods to include requiring a compliance inspection to determine an entity's eligibility for participation in a program or incentive that requires an above-average degree of compliance.

(d) Requires commission rules to provide that a regulated person with a compliance history that is unacceptable under this section and Section 5.752 is not eligible to participate in innovative regulatory programs or incentives.

**Sec. 5.757. PERFORMANCE ASSESSMENT FOR PERMITTING AND ENFORCEMENT DECISIONS.** (a) Requires the commission by rule to develop criteria and procedures for the use of compliance history in commission decisions regarding certain criteria.

(b) Requires the criteria and procedures to convey certain information.

**Sec. 5.758. ANNOUNCED INSPECTIONS.** (a) Prohibits the commission from announcing an inspection of a facility owned or operated by a person regulated by the commission unless the person has established a high performance compliance history that qualifies the person for announced inspections under the procedures and standards developed under Sections 5.752 and 5.756.

(b) Requires the commission to track whether inspections are announced or unannounced and to include the information in the report required by Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997.

**Sec. 5.759. ELIGIBILITY FOR FLEXIBLE PERMITTING.** Provides that a regulated entity is not eligible for flexible permitting unless the entity has established a better than average compliance history in comparison with entities operating under an ordinary permit.

**SECTION 4.02.** Amends Section 5.123, Water Code, as added by Chapter 1203, Acts of the 75th Legislature, Regular Session, 1997, transferring to new Chapter 5Q, Water Code, redesignating as Section 5.760, as follows:

**Sec. 5.760. REGULATORY FLEXIBILITY.** (a) 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 an alternative method or by applying an alternative standard that meets certain conditions.

(b) Prohibits the commission from exempting an applicant under this section unless the applicant can present to the commission documented evidence of benefits to environmental quality that will result from the project the applicant proposes.

(f) Deletes text regarding a permit.

(h) Requires the commission to perform certain procedures.

**SECTION 4.03.** Amends Section 7.067(a), Water Code, to prohibit the commission from approving a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

SECTION 4.04. Amends Section 361.0215, Health and Safety Code, as follows:

Sec. 361.0215. New heading: POLLUTION PREVENTION ADVISORY COMMITTEE.

(a) Provides that the pollution prevention, rather than waste reduction, advisory committee is composed of certain members or groups.

(c) Requires the committee to advise the commission on the creation and implementation of an incentive- and performance-based structure for the regulation of air and water quality and solid waste management as set out in Section 5.752, Water Code.

(d) Requires the committee to report quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters the committee considers important.

SECTION 4.05. Amends Section 361.088, Health and Safety Code, by adding Subsection (g), as follows:

(g) Requires the commission to review a permit issued under this chapter every five to seven years to assess the license holder's compliance history.

SECTION 4.06. Amends Chapter 382B, Health and Safety Code, by adding Sections 382.0215 and 382.0216, as follows:

Sec. 382.0215. ASSESSMENT OF EMISSIONS DUE TO EMISSIONS EVENTS. (a) Defines "emissions event."

(b) Requires the commission to require the owner or operator of a facility that experiences emissions events to meet certain criteria.

(c) Requires the owner or operator of a facility required by Section 382.014 to submit an annual emissions inventory report to include as part of the inventory certain information.

(d) Requires the commission to centrally track emissions events and collect information relating to certain criteria.

(e) Requires the commission to develop the capacity for electronic reporting and to incorporate reportable emissions events into a permanent centralized database for emissions events. Requires the database to be accessible to the public.

(f) Requires the commission annually to assess the information received under this section, including actions taken by the commission in response to the report required by Section 5.123, Water Code, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) Requires the commission, except as provided by Subsection (d), to require the owner or operator of a facility to take action to reduce emissions from emissions events required to be reported under Section 382.0215(b)(3). Requires the commission to require an owner or operator of a facility that has a reportable emissions event to file with the commission a corrective action plan to reduce emissions from emissions events.

(b) Requires a corrective action plan filed under Subsection (a) to identify the cause or causes of each emissions event, specify the control devices or other measures that will

prevent or minimize similar emissions events in the future, and specify a time within which implementation of the corrective action plan will be completed. Requires a corrective action plan to be approved by the commission. Provides that if the commission has not disapproved of a proposed corrective action plan before the 45th day after the date the commission receives the proposed plan, the plan is approved and the owner or operator of the facility must implement the plan. Requires the commission to emphasize reviewing for approval or disapproval proposed corrective action plans for emissions events that present the greatest concern to the public health or safety considering the factors provided by Section 382.0215(b)(3)(E). Requires an approved corrective action plan to be made available to the public except to the extent information in the plan is confidential information protected under Chapter 552, Government Code. Requires the commission to establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events.

(c) Authorizes an owner or operator of a facility for which a report is required under Section 382.0215(b)(3) to file a corrective action plan with that report.

(d) Authorizes the commission by rule to establish criteria under which the owner or operator of a facility having an emissions event is not required to submit under Subsection (a) a corrective action plan. Requires the commission at a minimum, in establishing rules under this subsection, to require consideration of the frequency and duration of the emissions event, the cause of the emissions event, the quantity and toxicity of the emissions resulting from the emissions event, and the impact of the emissions event on the local area's air quality. Prohibits the rules from excluding from the requirement to submit a corrective action plan emissions that result from routine startup and shutdown, routine maintenance procedures, or upsets resulting from the lack of preventive maintenance or from operator error, or emissions that are a part of a recurring pattern of emissions events indicative of inadequate design, operation, or maintenance.

(e) Provides that an owner or operator of a facility that has an emissions event is presumed to be required to submit a corrective action plan as provided by Subsection (a) unless the owner or operator demonstrates to the commission that, in accordance with rules adopted under Subsection (d), the plan is not required. Provides that this section does not limit the commission's authority to take enforcement action or the authority or right of any person to seek injunctive relief in relation to any emissions event.

(f) Prohibits a person from claiming a defense to a commission enforcement action under Chapter 7 (Enforcement), Water Code, if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs.

(g) Authorizes the commission to require the owner or operator of a facility that has emissions events that are sufficiently quantifiable, frequent, and predictable, to obtain a permit, permit amendment, or other authorization that includes those emissions.

SECTION 4.07. Amends Sections 382.051(a) and (b), Health and Safety Code, as follows:

(a) Authorizes the commission to issue a permit under certain criteria.

(b) Authorizes the commission, to assist in fulfilling its authorization provided by Subsection (a), to issue certain permits.

SECTION 4.08. Amends Chapter 382C, Health and Safety Code, by adding Sections 382.05181-383.05186, as follows:

Sec. 382.05181. PERMIT REQUIRED. (a) Prohibits any facility described by Section 382.0518(g) that does not have an application pending for a permit or other authorization under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, from emitting air contaminants on or after a certain period.

(b) Prohibits any facility described by Section 382.0518(g) that does not have a permit or other authorization under this chapter, other than a permit required under Section 382.054, from emitting air contaminants on or after a certain period.

(c) Provides that facilities eligible for a permit under Section 382.05184 are not subject to this section.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Requires any notice submitted in compliance with this section to be filed with the commission by the dates in Section 382.05181(a).

(b) Requires a notice under this section to include certain information.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) Authorizes the owner or operator of a facility described by Section 382.0518(g) to apply for a permit to operate the facility under this section.

(b) Requires the commission to grant a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment, the commission finds that the application demonstrates compliance with certain criteria.

(c) Authorizes the commission to issue an existing facility flexible permit for some or all of the facilities at a site described by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Requires permits issued under this subsection to follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) Prohibits the commission, if the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, from granting the permit under this section.

(e) Requires a person planning the modification of a facility previously permitted under this section to comply with Section 382.0518 before modifying.

(f) Authorizes the commission to adopt rules as necessary to implement and administer this section.

(g) Provides that a permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) Requires the applicant, if an applicant omits any relevant facts or submits incorrect information in an application, to submit the relevant facts or correct the information no later than 60 days after discovering the error. Authorizes the commission, if while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, to request the

information and set a reasonable deadline for a response. Provides that failure to comply with the deadline for the response will result in the application being returned to the applicant.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Authorizes facilities described by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 382.0365(h)(2), and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2005.

(b) Prohibits facilities described by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit or other authorization under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, from emitting air contaminants on or after September 1, 2007.

(c) Requires the commission to grant a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) Prohibits the commission, if the commission finds that the emissions from the facility will not comply with Subsection (c), from granting the permit under this section.

(e) Requires a person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) Authorizes the commission to adopt rules as necessary to implement and administer this section.

(g) Requires the applicant, if an applicant omits any relevant facts or submits incorrect information in an application, to submit the relevant facts or correct the information no later than 60 days after discovering the error. Authorizes the commission, if while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, to request the information and set a reasonable deadline for a response. Provides that failure to comply with the deadline for the response will result in the application being returned to the applicant.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) Provides that an electric generating facility is considered permitted under this section with respect to all air contaminants if the facility meets certain criteria.

(b) Provides that electric generating facilities, including coal-fired electric generating facilities, that are required to obtain a permit under Section 39.264 (Emissions Reductions of "Grandfathered Facilities"), Utilities Code, are not described by Subsection (a) will meet certain criteria.

(c) Requires the commission to issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Requires the commission, upon request by the applicant, to include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.



- (d) Authorizes the owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, to apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, meets certain criteria.
- (e) Requires nitrogen oxide emissions from facilities permitted under Subsection (d) to be included in the emission allowance trading program established under Section 39.264, Utilities Code. Requires the commission to not issue new allowances based on a permit issued under this section.
- (f) Requires a person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.
- (g) Authorizes the commission to adopt rules as necessary to implement and administer this section.
- (h) Provides that a permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.
- (i) Provides that for purposes of this section, a natural-gas-fired electric generating facility is one that is capable of burning natural gas or a fuel oil of a grade approved by commission rule. Requires the commission to adopt rules regarding acceptable fuel oil grades that require that the amount and grade of fuel oil used not increase emissions above allowable limits.

Sec. 382.05186. AUTHORIZATION FOR PIPELINE FACILITIES. (a) Requires the commission by rule to establish the procedures for applications for existing processing, treating, compression, or pumping facilities described by Section 382.0518(g) connected to or part of a gathering or transmission pipeline.

- (b) Authorizes the commission, based on a prioritization by the commission as necessary to meet local, regional, and statewide air quality needs related directly or indirectly to federal air quality standards, to require up to a 20 percent reduction of the hourly emission rate, in terms of grams per brake horsepower-hour, of nitrogen oxide and may also require up to a 20 percent reduction of the hourly emission rate, in terms of grams per brake horsepower-hour, of volatile organic compounds from reciprocating internal combustion engines subject to this section. Authorizes the commission to consider requiring up to a 20 percent reduction of the hourly emission rate of nitrogen oxide and may also consider requiring up to a 20 percent reduction of the hourly emission rate of volatile organic compounds from facilities other than reciprocating internal combustion engines that are connected to or part of a gathering or transmission pipeline. Authorizes the commission to by rule designate counties or regions of the state where greater reductions of emissions will be required than in other areas, but no more than 20 percent emissions reductions to be required in any area.
- (c) Requires the commission to perform certain procedures.
- (d) Requires facilities authorized by this section to be considered permitted under this chapter.
- (e) Requires the commission to issue a permit under this section if the requirements of this section are met.
- (f) Requires a person planning the modification of a facility previously permitted under

this section to comply with Section 382.0518 before modifying.

(g) Authorizes the commission to adopt rules as necessary to implement and administer this section.

(h) Provides that a permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) Requires an applicant, if an applicant omits any relevant facts or submits incorrect information in an application, to submit the relevant facts or correct the information no later than 60 days after discovering the error. Authorizes the commission, if while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, to request the information and set a reasonable deadline for a response. Provides that failure to comply with the deadline for the response will result in the application being returned to the applicant.

SECTION 4.09. Amends Section 382.05191, Health and Safety Code, as follows:

Sec. 382.05191. New heading: EMISSIONS REDUCTION PERMITS: NOTICE AND HEARING. (a) Requires an applicant for a permit or other authorization under Section 382.05183, Section 382.05185(c) or (d), Section 382.05186, or Section 382.0519 to publish notice of intent to obtain in accordance with Section 386.056.

(c) Makes conforming changes.

(d) Authorizes a person affected by a decision of the commission to issue or deny an, rather than voluntary, emissions reduction permit to move for rehearing and is entitled to judicial review under Section 382.032.

SECTION 4.10. Amends Section 382.05192, Health and Safety Code, as follows:

Sec. 382.05192. New heading: REVIEW AND RENEWAL OF EMISSIONS REDUCTION PERMITS. Makes conforming changes.

SECTION 4.11. Amends Section 382.0621(d), Health and Safety Code, to provide that the fees under this subsection do not apply to a facility with a permit or a permit application pending under Section 382.05185(c). Provides that the fees under this subsection do not apply to a facility for which a letter expressing intent to authorize that facility is filed on or before September 1, 2002, or a permit application is timely filed. Requires in the event that a letter of intent is not filed, or if a letter of intent is filed but a permit application is not subsequently timely filed, the fees due and owing for such facility to be deemed to have accrued since September 1, 2001, in the amounts set forth in this subsection. Makes a nonsubstantive change.

Requires the commission, on and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, to perform certain procedures.

SECTION 4.12. Amends Chapter 382C, Health and Safety Code, by adding Section 382.065, as follows:

Sec. 382.065. CERTAIN LOCATIONS FOR CRUSHING FACILITY PROHIBITED. (a) Requires the commission by rule to prohibit the location of or operation of a crushing facility for concrete production within one-half mile of a building used as a single or multifamily residence, school, or place of worship.

(b) Requires rules adopted under Subsection (a) to provide a transition period of nine months for crushing facilities in operation on the effective date of this section to cease operations and move outside of the prohibited area.

## ARTICLE 5. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

SECTION 5.01. Amends Chapter 421, Health and Safety Code, as added by Chapter 447, Acts of the 76th Legislature, Regular Session, 1999, transferred to Chapter 5, Water Code, redesignated as Subchapter R, to read as follows:

### SUBCHAPTER R. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

Sec. 5.801. New heading: DEFINITION. Defines “environmental testing laboratory.”

Sec. 5.802. New heading: ADMINISTRATION BY COMMISSION. Requires the commission, rather than the department, to adopt rules for the administration of the voluntary environmental testing laboratory accreditation program established by this chapter. Requires the program to be consistent with national accreditation standards approved by the National Environmental Laboratory Accreditation Conference.

Sec. 5.803. (a) Requires an environmental testing laboratory, to be accredited under the accreditation program adopted under this subchapter, rather than chapter, to submit an application to the commission on a form prescribed by the commission, accompanied by the accreditation fee. The application must contain the information that the commission requires.

(b) Requires the commission by rule to establish a schedule of reasonable accreditation fees designed to recover the costs of the accreditation program, including the costs associated with certain criteria.

Sec. 5.804. (a) Makes conforming changes.

(b) Authorizes the commission by rule to provide for the accreditation of an environmental testing laboratory that is accredited or license in another state by an authority that is approved by the National Environmental Laboratory Accreditation Conference. Makes conforming changes.

Sec. 5.805. Makes conforming changes.

Sec. 5.806. Makes conforming changes.

Sec. 5.807. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION ACCOUNT. (a) Requires all fees collected under this subchapter to be deposited to the credit of the environmental testing laboratory accreditation account and to be appropriated to the commission only for paying the costs of the accreditation program.

## ARTICLE 6. CERTIFICATION OF WATER TREATMENT SPECIALISTS

SECTION 6.01. Amends Section 3A, The Plumbing License Law (Article 6243-101, V.T.C.S.), transferring to Chapter 341, Health and Safety Code, redesignating as Chapter 341G, as follows:

### SUBCHAPTER G. CERTIFICATION OF WATER TREATMENT SPECIALISTS

Sec. 341.101. DEFINITIONS. Defines “commission,” “installation of water treatment appliances,” “water treatment,” and “water treatment equipment.”

Sec. 341.102. WATER TREATMENT SPECIALIST CERTIFICATION. (a) Requires the commission by rule, rather than the commissioner of Health or his designee, to establish a program to certify persons qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment equipment and appliances. Makes conforming changes.

(b) Requires the rules to establish certain criteria.

Sec. 341.103. CERTIFICATION REQUIRED. Prohibits a person from engaging in water treatment unless the person first obtains a certificate from the commission under the program established under this subchapter.

Sec. 341.104. APPLICATION FOR CERTIFICATION. Requires a person desiring to obtain certification under the program established under this subchapter to file with the commission certain information.

Sec. 341.105. ISSUANCE OF CERTIFICATE. (a) Requires the commission, rather than the Texas Department of Health, on receipt of an application that meets commission requirements and the required fee, to issue to a person who meets commission standards for certification a certificate stating that the person is qualified to perform certain procedures on water treatment facilities. Deletes text regarding an applicant or holder of a permit. Makes conforming changes.

(b) Makes a conforming change. Deletes text regarding the Texas Board of Health.

(c) Provides that a person who holds a license under the Texas Plumbing License Law (Article 6243-101, V.T.C.S.) is exempt from the requirements of this subchapter.

## ARTICLE 7. REGISTRATION OF IRRIGATORS AND ON-SITE SEWAGE DISPOSAL SYSTEM INSTALLERS.

SECTION 7.01. Amends Section 34.008(a), Water Code, as follows:

(a) Authorizes the commission to waive any prerequisite, rather than certify, for obtaining registration for an applicant who is registered as a licensed irrigator or licensed installer by another jurisdiction with which this state has a reciprocity agreement. Authorizes the commission to make an agreement, subject to the approval of the governor, with another state to allow to allow for registration by reciprocity. Deletes text regarding requirements for registration.

SECTION 7.02. Amends Section 34.009(f), Water Code, to require the commission, for the year in which the expiration date is changed, to prorate registration, rather than renewal, fees on a monthly basis so that each registrant pays, rather than will pay, only that portion of the registration fee that is allocable to the number of months during which the registration is valid. Provides that on renewal of the registration on the new expiration date, the total registration renewal fee is due. Deletes text regarding payable on August 31.

SECTION 7.03. Amends section 366.076, Health and Safety Code, as follows:

Sec. 366.076. REGISTRATION RENEWAL. Authorizes the commission by rule to adopt a system under which registrations expire on various dates during the year. Requires the commission, for each year in which the registration expiration date is changed, to prorate registration fees on a monthly basis so that each registrant pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid. Provides that on renewal of the registration on the new expiration date, the total registration renewal fee is payable. Deletes text regarding renewal of registrations.

## ARTICLE 8. REGULATION OF SOLID WASTE

SECTION 8.01. Amends Section 361.114, Health and Safety Code, as follows:

Sec. 361.114. New heading: PROHIBITION OF DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS. Requires the commission by rule to prohibit the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. Deletes text regarding issued permit and injection well. Deletes text regarding the commission.

SECTION 8.02. Amends Chapter 361C, Health and Safety Code, by adding Section 361.119, as follows:

Sec. 361.119. REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. (a) Requires the commission by rule to ensure that a solid waste processing facility the primary function of which is the transfer of solid waste is regulated as a solid waste facility under this chapter and is not allowed to operate unregulated as a recycling facility.

(b) Provides that a facility and the operations conducted and materials handled at the facility are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that certain conditions are met.

## ARTICLE 9. EDWARDS AQUIFER

SECTION 9.01. Defines “Edwards Aquifer.”

SECTION 9.02. Amends Chapter 26B, Water Code, by adding Section 26.050, as follows:

Sec. 26.050. Requires the commission to make available to the public digital copies of the Recharge, Transition, and Contributing Zone boundary lines, when they become available.

SECTION 9.03. Amends Chapter 26B, Water Code, by adding Section 26.051, as follows:

Sec. 26.051. Requires the commission to report annually on the Edwards Aquifer Program expenses and allocation of fees.

SECTION 9.04. Amends Chapter 26D, Water Code, by adding Section 26.137, as follows:

Sec. 26.137. Requires the commission to provide for a 30-day comment period in the review process for Edwards Aquifer Protection Plans in the Contributing Zone of the Edwards Aquifer as provided in 30 T.A.C. Section 213.4(a)(2).

## ARTICLE 10. MATTERS RELATED TO REMEDIATION

SECTION 10.01. Amends Chapter 361F, Health and Safety Code, by adding Section 361.1875, as follows:

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. Prohibits the commission from naming a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that certain conditions exist.

## ARTICLE 11. REGULATION OF CERTAIN ANIMAL FEEDING OPERATIONS

SECTION 11.01. Amends Section 26.001, Water Code, to redefine “agricultural waste” and “pollutant.”

SECTION 11.02. Amends Chapter 26, Water Code, by adding Subchapter L, as follows:

#### SUBCHAPTER L. PROTECTION OF CERTAIN WATERSHEDS

Sec. 26.501. DEFINITIONS. Defines “concentrated animal feeding operation,” “new concentrated animal feeding operation,” and “historical waste application field.”

Sec. 26.502. APPLICABILITY. Provides that this subchapter applies only in a major sole source impairment zone. Defines “major sole source impairment zone.”

Sec. 26.503. REGULATION OF CERTAIN CONCENTRATED ANIMAL FEEDING OPERATION WASTES. (a) Authorizes the commission to authorize the construction or operation of a new concentrated animal feeding operation, or an increase in the animals confined under an existing operation, only by a new or amended individual permit.

(b) Requires the individual permit issued or amended under Subsection (a) to meet certain criteria.

(c) Authorizes the commission to approve a detailed nutrient utilization plan approved by the commission that is developed by a professional agronomist or soil scientist certified by the American Society of Agronomy only if the commission finds that another person listed by Subsection (b)(2)(E)(ii) cannot develop a plan in a timely manner.

(d) Prohibits the commission from issuing a general permit to authorize the discharge of agricultural waste into or adjacent to waters in this state from an animal feeding operation if such waters are within a major sole source impairment zone.

(e) Authorizes the commission and employees or agents of the commission to enter public or private property at any reasonable time for activities related to the purposes of this subchapter. Authorizes the commission to enforce this authority as provided by Section 7.032, 7.051, 7.052, or 7.105.

(f) Provides that this section does not limit the commission's authority to include in an individual or general permit under this chapter provisions necessary to protect a water resource in this state.

Sec. 26.504. WASTE APPLICATION FIELD SOIL SAMPLING AND TESTING. (a) Requires the operator of a concentrated animal feeding operation to contract with a person described by Section 26.503(b)(2)(E)(ii) selected by the executive director to collect one or more representative composite soil samples from each waste application field. Requires the operator to have sampling performed under this subsection not less often than once every 12 months.

(b) Requires each sample collected under this section to be tested for phosphorus and any other nutrient designated by the executive director. Requires the test results to be made available to the executive director and the operator of the concentrated animal feeding operation. Requires the test results are public records of the commission.

(c) Requires the operator, if the samples tested under Subsection (b) show a phosphorus level in the soil of more than 500 parts per million, to file with the commission a new or amended nutrient utilization plan with a phosphorus reduction

component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(d) Requires the operator, if the samples tested under Subsection (b) show a phosphorus level in the soil of more than 200 parts per million but not more than 500 parts per million, to perform certain procedures.

(e) Provides that the owner or operator of a waste application field required by this section to have a nutrient utilization plan with a phosphorus reduction component for which the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus is subject to enforcement for a violation of this subchapter at the discretion of the executive director. Requires the executive director, in determining whether to take an enforcement action under this subsection, to consider any explanation presented by the owner or operator regarding the certain reasons.

(f) Requires the commission to adopt rules to implement this section. Requires the rules to provide for the scheduling and manner of the required soil testing and the form, content, and deadlines for plans required under this section.

Sec. 26.505. ENFORCEMENT DISCRETION. Provides that the commission does not have prosecutorial discretion in enforcing this subchapter and is required to strictly enforce the provisions of this subchapter.

## ARTICLE 12. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS

SECTION 12.01. Amends Chapter 26I, Water Code, by adding Section 26.3476, as follows:

Sec. 26.3476. SECONDARY CONTAINMENT REQUIRED FOR TANKS LOCATED OVER CERTAIN AQUIFERS. (a) Defines "secondary containment."

(b) Requires an underground storage tank system, at a minimum, to incorporate a method for secondary containment if the system is located in certain areas.

(c) Provides that Section 26.3475(e) applies to an underground storage tank system that is subject to this section as if a violation of this section were a violation of Section 26.3475.

(d) Provides that this section does not prohibit the commission or a political subdivision from adopting additional or more stringent requirements regarding methods for containment of underground storage tank systems if those requirements are compatible with the requirements of this section.

## ARTICLE 13. REGULATION AND REMEDIATION OF UNDERGROUND AND ABOVEGROUND STORAGE TANKS

SECTION 13.01. Amends Section 26.342, Water Code, to define "owner."

SECTION 13.02. Amends Sections 26.346(a) and (c), Water Code, as follows:

(a) Requires the commission to also require that an owner or operator of an underground storage tank used for storing motor fuels (as defined in commission rule) complete an annual underground storage tank compliance certification form.

(c) Requires the commission to issue to each person who owns or operates a petroleum storage tank that is registered under this section a registration and compliance confirmation certificate that includes a brief description of certain responsibilities.

SECTION 13.03. Amends Section 26.351, Water Code, by adding Subsections (f), (g), and (h), as follows:

(f) Requires the person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, to meet certain deadlines.

(g) Provides that for persons regulated under Subsection (f), their failure to comply with any deadline listed in Subsection (f) is a violation of this section, and the executive director to enforce such a violation under Chapter 7 of this code. Requires a missed deadline that is the fault of the person, his agent, or contractor to also eliminate reimbursement eligibility as described by Section 26.3571(b). Provides that if it can be established to the executive director's satisfaction that the deadline was not missed at the fault of the person, his agent, or contractor, then reimbursement eligibility is not affected under this subsection.

(h) Authorizes a person's liability to perform corrective action under this chapter is unrelated to any possible reimbursements the person to be eligible for under Section 26.3571.

SECTION 13.04. Amends Section 26.3512(b), Water Code, to prohibit funds from the petroleum storage tank remediation account from being used to pay, and the owner or operator of a petroleum storage tank ordered by the commission to take corrective action is responsible for payment of certain expenses.

SECTION 13.05. Amends Section 26.355(d), Water Code, to provide that this limitation is not applicable to cost recovery actions initiated by the executive director at sites where the executive director has determined that the owner or operator is in violation of Section 26.351(f).

SECTION 13.06. Amends Section 26.3571, Water Code, by amending Subsection (b) and adding Subsections (g) and (h), as follows:

(b) Requires a person, to be an eligible owner or operator for purposes of this subchapter, to not have missed any of the deadlines described in Section 26.351(f) and to meet certain conditions.

(g) Requires an otherwise eligible owner or operator who misses a deadline referenced in Subsection (b) to be considered ineligible for reimbursement under this subchapter.

(h) Provides that nothing in this section reduces the liability to perform corrective action created under Section 26.351 and other parts of this subchapter.

SECTION 13.07. Amends Section 26.3572(b), Water Code, to require the commission to perform certain procedures.

SECTION 13.08. Amends Section 26.3573, Water Code, by amending Subsection (d) and adding Subsections (r) and (s), as follows:

(d) Authorizes the commission to use the money in the petroleum storage tank remediation account to pay certain expenses.



(r) Prohibits the petroleum storage tank remediation account from being used to reimburse any person for corrective action performed after September 1, 2005.

(s) Prohibits the petroleum storage tank remediation account from being used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2006.

SECTION 13.09. Amends Sections 26.3574(b), (x), (y), (z), and (aa), Water Code, as follows:

(b) Requires each operator of a bulk facility on withdrawal from bulk of a petroleum product to collect from the person who orders the withdrawal a fee in a certain amount.

(x) Deletes text regarding deposits made to the general revenue fund.

(y) Deletes text regarding unobligated balance in the petroleum storage tank remediation account.

(z) Deletes text regarding unobligated balance.

SECTION 13.10. Amends Sections 26.359 and 26.361, Water Code, as follows:

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. Defines “local government.”

(b) Provides that a regulation or ordinance adopted by a local government that imposes standards for certain criteria of underground storage tanks is not valid. Deletes text regarding unified statewide program. Deletes text regarding regulation or ordinance. Makes a nonsubstantive change.

(c) Provides that this section does not apply to a regulation or ordinance in effect as of January 1, 2001.

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Provides that notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2006, rather than 2003. Prohibits the commission, on or after September 1, 2006, rather than 2003, from using money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action. Deletes text regarding the commission collecting a fee.

#### ARTICLE 14. LITTER AND WASTE; RECYCLING

SECTION 14.01. DEFINITIONS. Defines “commission” and “recycling.”

SECTION 14.02. STUDY AND REPORT. Requires the commission to conduct a written report concerning certain areas.

SECTION 14.03. EXPIRATION. Provides that this article expires January 1, 2003.

#### ARTICLE 15. EMISSIONS REQUIREMENTS FOR VEHICLES IN FLEET

SECTION 15.01. Amends Section 1232.104(a), Government Code, to authorize the authority, if the authority determines that a project is financially viable and sufficient revenues will be available, to issue and sell obligations the proceeds of which is required to be used for the financing of certain projects.

SECTION 15.02. Amends Section 2171.103(b), Government Code, to delete a reference to Chapter

2158A.

SECTION 15.03. Amends Chapter 382, Health and Safety Code, by adding Subchapter G, as follows:

**SUBCHAPTER G. TEXAS CLEAN FLEET PROGRAM**

Sec. 382.151. **DEFINITIONS.** Defines “affected area” “annually,” “lease.” “local government,” “mass transit authority,” “motor vehicle,” and “state agency.”

Sec. 382.152. **APPLICABILITY.** Provides that this subchapter applies to certain agency’s or entities.

Sec. 382.153. **PURCHASING AND LEASING REQUIREMENTS.** (a) Prohibits certain percentages of motor vehicles purchased or leased annually by a state agency, mass transit authority, local government, or other person from exceeding an average of oxides of nitrogen standards of bin 3, 40 C.F.R. 86.1811-04 as published in the February 10, 2000, Federal Register for Tier 2 exhaust emission standards.

(b) Authorizes a state agency, mass transit authority, local government, or other person to purchase or lease a motor vehicle that is converted to a fuel or power source other than gasoline or diesel to satisfy the percentage requirements under this section.

(c) Requires all motor vehicles purchased or leased under this section to be certified to meet the federal Tier 2 exhaust emission bin standards.

(d) Authorizes the commission to waive the requirements of this section or reduce the percentage requirements of this section if certain conditions are met.

Sec. 382.154. **ADOPTION OF RULES.** Requires the commission to adopt rules to implement this subchapter.

Sec. 382.155. **REPORTING REQUIREMENTS.** Requires the commission by rule to require each state agency, mass transit authority, local government, or other person to whom this subchapter applies to maintain records and submit reports to demonstrate compliance with this subchapter.

Sec. 382.156. **RELATIONSHIP TO OTHER LAW.** Provides that this subchapter does not require the purchase or lease of a motor vehicle in violation of the alternative fuel transportation program under the Energy Policy Act of 1992 (Pub. L. No. 102-486), as amended, or any other applicable federal or state law.

SECTION 15.04. Amends Section 113.287(e), Natural Resources Code, to delete text regarding fuel requirements.

SECTION 15.05. Amends Section 5.178(b), Water Code, to require the report due by December 1 of each even-numbered year to include certain reports.

SECTION 15.06. Repealer: Chapter 2158A (Purchase of Passenger Vehicles), Government Code; Chapter 382F (Alternative Fuel Program), Health and Safety Code; Chapter 451G (Alternative Fuel Use Program), Transportation Code; Chapter 452F (Alternative Fuel Use Program), Transportation Code; Chapter 453F (Alternative Fuel Use Program), Transportation Code.

SECTION 15.07. Requires the Texas Natural Resource Conservation Commission to examine the feasibility and effectiveness of fleet program requirements similar to the requirements under Chapter

382G, Health and Safety Code, as added by this article, for motor vehicles that have a gross vehicle weight rating of more than 10,000 pounds. Requires the commission to report its findings and recommendations to the legislature by December 1, 2002.

SECTION 15.08. (a) Provides that this article takes affect September 1, 2001, except as otherwise provided by this section.

(b) Provides that the sections of this article that amend Sections 1232.104(a) and 2171.103(b), Government Code, Section 113.287(e), Natural Resources Code, and Section 5.178(b), Water Code, take effect September 1, 2003.

(c) Provides that the section of this article that repeals certain statutes takes effect September 1, 2003.

#### ARTICLE 16. REGULATION OF AIR POLLUTION

SECTION 16.01. Amends Section 382.019(a), Health and Safety Code, to authorize the commission by rule, except as provided by Section 382.037(g), or another provision of this chapter, to provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

SECTION 16.02. Amends Section 382.037, Health and Safety Code, by amending Subsection (g) and adding Subsections (h) and (i), as follows:

(g) Prohibits the commission from establishing, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (h) unless the fuel is specifically authorized by the legislature. Makes a conforming change. Deletes text regarding attainment of federal ozone ambient air quality standards.

(h) Prohibits the commission from requiring the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(i) Authorizes the commission to consider, as an alternative method of compliance with Subsection (h), fuels to achieve equivalent emissions reductions.

SECTION 16.03. Amends Section 382.039(a), Health and Safety Code, to require the commission, except as provided by Section 382.037(g) or another provision of this chapter, to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

SECTION 16.04. Provides that the changes in law made by this Act do not apply to fuel standards adopted by the commission before September 1, 2000.

SECTION 16.05. Amends Chapter 382C, Health and Safety Code, by adding Section 382.05151, as follows:

Sec. 382.05151. EFFECT OF PERMIT ON RESEARCH BY INSTITUTIONS OF HIGHER EDUCATION. Requires the commission, in issuing a permit under this chapter, to consider the effects emissions from the facility under the proposed permit may have on research being conducted by an accredited institution of higher education.

## ARTICLE 17. CONFORMING AMENDMENTS

SECTION 17.01. Amends Section 5.174(a), Water Code, to make a conforming change.

SECTION 17.02. Amends Section 11.085, Water Code, as it exists after the transfer and redesignation of Subsections (f)-(i) by this Act, by amending Subsection (d) and relettering Subsections (j)-(v) as Subsections (f)-(r), to require notice to be provided pursuant to Section 5.652, rather than Subsection (g) of this section.

SECTION 17.03. Amends Section 11.132, Water Code, as it exists after the transfer and redesignation of Subsections (a)-(c) by this Act, by adding new Subsections (a) and (b), relettering existing Subsection (f) as Subsection (c), and amending existing Subsection (f), to read as follows:

(a) Requires notice to be given of an application for authorization to appropriate unappropriated state water as prescribed by Section 5.653. Requires the commission, on the motion of a commissioner or on the request of the executive director or any affected person, to hold a public hearing on the application.

(b) Authorizes the commission to act on the application without holding a public hearing if notice has been given as provided by Section 5.654 and, within 30 days after the date notice is published under Section 5.654(a), a public hearing has not been requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(c) Provides that if, on the date specified in the notice prescribed by Section 5.653(c), the commission determines that a public hearing is required to be held, the matter to be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene.

SECTION 17.04. Amends Section 11.139(g), Water Code, to require the requirements of Sections 5.653 and 5.654, rather than Section 11.132 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency authorization under this section, but such general notice of the hearing to be given as the commission, under Subsections (c) and (e) considers practicable under the circumstances.

SECTION 17.05. Amends Section 11.143, Water Code, as it exists after the transfer and redesignation of Subsections (d)-(f) by this Act, by adding a new Subsection (d), relettering existing Subsections (g)-(i) as Subsections (e)-(g), and amending existing Subsection (g), to read as follows:

(d) Provides that except as otherwise specifically provided by this subsection, before the commission is authorized to approve an application and issue a permit to use water from a dam or reservoir exempted under Section 11.142 for a purpose other than domestic or livestock use, it is required to give notice as prescribed by Section 5.655 and hold a hearing as prescribed by this section. Authorizes the commission to act on the application without holding a public hearing if the applicant publishes the commission's notice as required by Section 5.656.

(e) Provides that if on the date specified in the notice prescribed by Section 5.656 the commission determines that a public hearing must be held, the matter is required to be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene.

SECTION 17.06. Amends Section 11.323(a), Water Code, to make a conforming change.

SECTION 17.07. Amends Sections 26.0135(a) and (b), Water Code, as follows:

(a) Requires river authorities, in order to conserve public funds and avoid duplication of effort, subject to adequate funding under Section 26.0291, to, to the greatest extent possible and under the supervision and assessments in their own watersheds.

(b) Provides that a steering committee established by the commission to comply with this subsection in the absence of a river authority or other qualified local government is not subject to Chapter 2110 (State Agency Advisory Committees), Government Code, rather than Article 6252.33, Revised Statutes. Makes conforming changes.

SECTION 17.08. Amends Section 26.0135(d), Water Code, as amended by Chapters 101 and 1082, Acts of the 75th Legislature, Regular Session, 1997, to make conforming changes.

SECTION 17.09. Amends Section 26.022, Water Code, as it exists after the transfer and redesignation of Subsections (b) and (c) by this Act, by amending Subsection (a), relettering existing Subsections (d) and (e) as Subsections (b) and (c), and amending existing Subsections (d) and (e), as follows:

(a) Provides that except as otherwise provided in Sections 5.501, 5.504, 5.509, and 26.176, the provisions of this section and of Section 5.658 apply to all hearings conducted in compliance with this chapter.

(b) Requires the individual or individuals holding the hearing, called the hearing body, to conduct the hearing at the time and place stated in the notice given under Section 5.655. Authorizes the hearing body to continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice.

(c) If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the person conducting the hearing at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed by Section 5.658(b), rather than in Subsection (c) of this section, at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting.

SECTION 17.10. Amends Section 26.028, Water Code, as it exists after the transfer and redesignation of Subsections (a), (b), (e), and (g) by this Act, by adding a new Subsection (a), relettering existing Subsections (c) and (d) as Subsections (b) and (c), amending existing Subsection (d), adding a new Subsection (d), relettering existing Subsection (f) as Subsection (e), and adding a new Subsection (f), as follows:

(a) Requires notice of an application for and a hearing on an application for permit, permit amendment, or permit renewal to be given as required by Section 5.659.

(c) Authorizes the commission, notwithstanding any other provision of this chapter, at a regular meeting without the necessity of holding a public hearing, to approve an application to renew or amend a permit if certain conditions are met.

(d) Requires notice of an application under Subsection (c) to be given as provided by Section 5.659(c) and the persons notified under that section may present information to the commission on the application.

(f) Authorizes the commission, for the purposes of Subsection (a), to act on an application without holding a public hearing if notice is given as provided by Section 5.660 and, within 30 days after the date of the publication of notice under Section 5.660(a), neither a commissioner, the executive director, nor an affected person who objects to the application has requested a public hearing.

SECTION 17.11. Amends Section 26.0281, Water Code, as follows:

Sec. 26.0281. New heading: CONSIDERATION OF COMPLIANCE HISTORY. Requires the commission, in considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, to consider the compliance history of the applicant and its operator under the method for evaluating compliance history developed by the commission under Section 5.754. Deletes text regarding adjudication decision and proceeding. Deletes text regarding laws governing waste discharge.

SECTION 17.12. Amends Section 26.040, Water Code, as it exists after the transfer and redesignation of Subsection (b) by this Act, by relettering Subsections (c)-(m) as Subsections (b)-(l) and amending existing Subsections (h) and (i), as follows:

(g) Requires the commission, notwithstanding other provisions of this chapter after hearing, to deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger's compliance history is unacceptable under the method of evaluating compliance history developed by the commission under Section 5.754 during the period established by the commission under that section for consideration of compliance history. Deletes text regarding discharger. Deletes text regarding violations.

(h) Authorizes a general permit to be issued for a term not to exceed five years. Authorizes a general permit, after notice and comment as provided by Section 5.661 and Subsections (b) and (c), rather than (b)-(d), to be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or terms not to exceed five years each.

SECTION 17.13. Amends Section 27.018, Water Code, as it exists after the transfer and redesignation of Subsection (b) by this Act, by adding a new Subsection (b) and amending Subsection (c), as follows:

(b) Requires notice of the opportunity to request a public hearing on a permit application to be given as provided by Section 5.662.

(c) Provides that before the commission begins to hear testimony in a contested case as defined by Chapter 2001, Government Code, evidence is required to be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons as required by commission rules adopted under Section 5.662.

SECTION 17.14. Amends Sections 27.051(d) and (e), Water Code, as follows:

(d) Requires the commission, in determining if the use or installation of an injection well for the disposal of hazardous waste is in the public interest under Subsection (a)(1) rather than of this section, to consider, but to not be limited to the consideration of certain criteria.

(e) Requires the commission to establish a procedure by rule for its preparation of compliance summaries relating to the compliance history of the applicant in accordance with the method for evaluating compliance history developed by the commission under Section 5.754. Deletes text regarding compliance and noncompliance. Deletes text regarding rules or orders or permits issued by the commission.

SECTION 17.15. Amends Section 361.020(d), Health and Safety Code, to require the commission in developing a comprehensive statewide strategic plan to consult with certain persons or committees.

SECTION 17.16. Amends Section 361.063, Health and Safety Code, as it exists after the transfer and

redesignation of Subsection (c) by this Act, by adding a new Subsection (c), as follows:

(c) Provides that filing notice with the commission as required by Section 5.663, Water Code, initiates the preapplication review process.

SECTION 17.17. Amends the heading to Section 361.079, Health and Safety Code, as follows:

Sec. 361.079. HEARING PROCEDURES.

SECTION 17.18. Amends Section 361.079, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (a) and (c) by this Act, by adding a new Subsection (a), as follows:

(a) Provides that notice for a hearing under Section 361.080 or 361.081 is given as provided by Section 5.665, Water Code. Requires the commission by rule to establish procedures for a public hearing under Section 361.080 or 361.081.

SECTION 17.19. Amends Section 361.0791, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (e), (f), and (g) by this Act, by adding a new Subsection (e), as follows:

(e) Requires notice of the meeting, if a meeting is required under Subsection (a), to be given as provided by Section 5.666, Water Code.

SECTION 17.20. Amends Section 361.080(b), Health and Safety Code, to require notice for a hearing session held under this section to be provided in accordance with Section 5.666, Water Code, rather than Section 361.0791.

SECTION 17.21. Amends Section 361.081, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (a) and (b) by this Act, by amending the heading, adding a new Subsection (a), and relettering and amending Subsection (c), as follows:

Sec. 361.081. New heading: HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY. (a) Requires the commission to require the applicant to provide notice of the hearing as provided by Section 5.667, Water Code.

(b) Makes a conforming change.

SECTION 17.22. Amends Section 361.082, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (c) by this Act, by adding a new Subsection (c) and amending Subsection (d), as follows:

(c) Requires the commission by rule to establish procedures for a public hearing on an application for a permit under this section. Requires notice of the hearing to be given as provided by Section 5.668, Water Code.

(d) Makes a conforming change.

SECTION 17.23. Amends Sections 361.084(a) and (c), Health and Safety Code, as follows:

(a) Requires the commission by rule to establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code.

(c) Provides that evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence

of a final determination of noncompliance with federal statutes or statutes of any state during the period adopted under Section 5.754, Water Code, for the consideration of compliance history, rather than preceding five years, concerning solid waste management may meet be offered or admitted under certain conditions.

SECTION 17.24. Amends Sections 361.088(d) and (f), Health and Safety Code, as follows:

(d) Makes a conforming change.

(f) Requires the commission, notwithstanding Subsection (e), if the commission determines that an applicant's compliance history for the period adopted under Section 5.754, Water Code, for the consideration of compliance history, rather than preceding five years, raises an issue regarding the applicant's ability to comply with a material term of its permit, to provide an opportunity to request a contested case hearing.

SECTION 17.25. Amends Section 361.089, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (b) and (c) by this Act, by adding new Subsections (b) and (c) and amending Subsections (a), (e), and (f), as follows:

(a) Authorizes the commission, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a compliance history that is unacceptable under the method of evaluating compliance history developed by the commission under Section 5.754, Water Code, during the period established by the commission under that section for consideration of compliance history. Deletes text regarding a violation of this chapter.

(b) Requires the commission to provide notice under Section 5.669, Water Code, and an opportunity for a hearing to the permit holder or applicant and persons affected. Authorizes the commission to also hold a hearing on its own motion.

(c) Requires the commission by rule to establish procedures for any public hearing under this section.

(e) Authorizes the commission to deny an original or renewal permit if it is found, after notice and hearing, that certain conditions exist.

(f) Requires the commission, before denying a permit under this section, to find certain history information of the applicant.

SECTION 17.26. Amends Section 382.017, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (b) by this Act, by adding a new Subsection (b) as follows:

(b) Requires notice of a public hearing on a proposed rule under this section to be given as provided by Section 5.670, Water Code.

SECTION 17.27. Amends Sections 382.0518(b) and (c), Health and Safety Code, as follows:

(b) Requires the commission to grant within a reasonable time a permit to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under Section 382.056(k), rather than Section 382.056(d), the commission finds certain information.

(c) Authorizes the commission, in considering the issuance, amendment, or renewal of a permit, to consider the applicant's compliance history, in accordance with the method for evaluating compliance history developed by the commission under Section 5.754,



Water Code, during the period established by the commission under Section 5.754, Water Code, for the consideration of compliance history. Deletes text regarding adjudicated decision or compliance proceeding.

SECTION 17.28. Amends Section 382.05191(a), Health and Safety Code, to require an applicant for a permit under Section 382.0519 to publish notice of intent to obtain the permit in accordance with Section 5.673, rather than Section 382.056.

SECTION 17.29. Amends Section 382.055, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (c) by this Act, by adding a new Subsection (c) and amending Subsection (d), as follows:

(c) Requires the commission to provide notice to the permit holder, as provided by Section 5.672, Water Code, that the permit is scheduled for review.

(d) Requires the commission, in determining whether and under which conditions a preconstruction permit should be renewed, to consider, at a minimum certain information.

SECTION 17.30. Amends Section 382.056, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (a)-(c), (g), and (i) by this Act, by adding a new Subsection (a), relettering Subsections (d)-(f) as Subsections (b)-(d), adding a new Subsection (e), relettering Subsections (h) and (j)-(p) as Subsections (f)-(m), and amending existing Subsections (h) and (o), as follows:

(a) Requires an applicant for a permit under Section 382.0518 or a permit renewal review under Section 382.055 to publish notice of intent to obtain the permit or permit review as provided by Section 5.673, Water Code.

(e) Requires the applicant, if, in response to the notice published under Subsection (a) for a permit under Section 382.0518 or a permit renewal review under Section 382.055, a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, to publish notice of the preliminary decision as provided by Section 5.673(d), Water Code, and the commission to seek public comment on the preliminary decision. Requires the commission to consider the request for public hearing under the procedures provided by Section 5.673(e), Water Code, and Subsections (g)-(k). Prohibits the commission from seeking further public comment or hold a public hearing under the procedures provided by Section 5.673(e), Water Code, and Subsections (g)-(k) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(f) Makes conforming changes.

(l) Authorizes the commission, notwithstanding other provisions of this chapter, to hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is unacceptable under the method of evaluating compliance history developed by the commission under Section 5.754, Water Code, during the period established by the commission under that section for consideration of compliance history. Deletes text regarding violations.

SECTION 17.31. Amends Section 382.0561, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (f) by this Act, by adding a new Subsection (f) to require notice of the

public comment period and opportunity for a hearing under this section to be published in accordance with Section 5.674, Water Code.

SECTION 17.32. Amends Section 382.058, Health and Safety Code, as amended by Chapters 391 and 406, Acts of the 76th Legislature, Regular Session, 1999, is reenacted, as follows:

Sec. 382.058. New heading: NOTICE OF AND HEARING ON CONSTRUCTION OF CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION. (a) Makes a conforming change.

(b) Authorizes only those persons actually residing in a permanent residence within 440 yards of the proposed plant to request a hearing under Section 382.056, rather than Section 383.056(d), as a person who may be affected.

SECTION 17.33. Amends Section 401.110, Health and safety Code, as follows:

Sec. 401.110. DETERMINATION OF LICENSE. Authorizes the commission, in making a determination whether to grant, deny, amend, revoke, suspend, or restrict a license or registration, to consider an applicant's or license holder's technical competence and compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code. Delete text regarding background of licensure. Makes conforming and nonsubstantive changes.

SECTION 17.34. Amends Section 401.112(a), Health and Safety Code, to require the department or commission, within its jurisdiction, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, to consider certain information.

SECTION 17.35. Amends Section 401.114, Health and Safety Code, as follows:

Sec. 401.114. NOTICE OF HEARING. (a) Makes conforming changes.

(b) Requires the commission, before the commission, within its jurisdiction, grants or renews a license to dispose of low-level radioactive waste from other persons, to give notice and to provide an opportunity for a public hearing in the manner provided by Section 5.676, Water Code, the commission's formal hearing procedure, and Chapter 2001 (Administrative Procedure), Government Code.

(d) Makes conforming changes.

SECTION 17.36. Amends Section 401.116, Health and Safety Code, by amending Subsection (b), adding a new Subsection (c), relettering existing Subsections (c) and (d) as Subsections (d) and (e), and amending existing Subsection (d), as follows:

(b) Requires the department to publish notice of an amendment to a license to process low-level radioactive waste once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and to give notice to any person who has notified the department, rather than agency, in advance, of the desire to receive notice of proposed amendment of the license.

(c) Requires the commission to publish notice of an amendment to a license to dispose of low-level radioactive waste as provided by Section 5.677, Water Code.

(d) Requires notice under Subsection (b) to include certain information.

(e) Requires the agency to give notice and hold a hearing to consider the license amendment if a person affected files a written complaint with the agency before the 31st

day after the date on which notice is published under Subsection (b) or Section 5.677, Water Code, as appropriate. Requires the agency to give notice of the hearing as provided by Section 401.114 or by Section 5.676, Water Code.

#### ARTICLE 18. REGULATION OF DISPOSAL OF ANIMAL REMAINS

SECTION 18.01. Amends Chapter 801H, Occupations Code, by adding Section 801.361, as follows:

Sec. 801.361. DISPOSAL OF ANIMAL REMAINS. (a) Authorizes a veterinarian to dispose of the remains of an animal by burial or burning if certain conditions exist.

(b) Prohibits the commission, notwithstanding any other law, from adopting a rule that prohibits conduct authorized by this section.

(c) Provides that this section applies only in a county with a population of less than 10,000.

#### ARTICLE 19. TRANSITIONS; EFFECTIVE DATE

SECTION 19.01. CHANGE OF AGENCY NAME. (a) Sets forth provisions regarding the commission.

(b) Provides that effective January 1, 2004, a reference in law to the Texas Natural Resource Conservation Commission is a reference to the Texas Department of Environmental Quality.

(c) Requires the commission to adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Authorizes the agency, until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, to perform any act authorized by law for the commission as the Texas Natural Resource Conservation Commission or as the Texas Department of Environmental Quality. Any act of the commission acting as the Texas Department of Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission.

#### SECTION 19.02. TRANSFER OF SAFE DRINKING WATER LABORATORY

CERTIFICATION PROGRAM. (a) Provides that on the effective date of this Act, the certain criteria are transferred to the commission.

(b) Provides that on the effective date of this Act, Texas Department of Health rules relating to the safe drinking water laboratory certification program administered by the Texas Department of Health's bureau of laboratories are the rules of the commission until the commission adopts rules to govern that program.

(c) Provides that a certification issued by the Texas Department of Health for a safe drinking water laboratory before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section.

#### SECTION 19.03. TRANSFER OF ENVIRONMENTAL TESTING LABORATORY

CERTIFICATION PROGRAM. (a) Transfers the environmental testing laboratory certification program, on the effective date of this Act, to the commission.

(b) Transfers rules of the Texas Department of Health (TDH) relating to the environmental testing laboratory program, on the effective date of this Act, to the commission until the commission adopts rules to govern that program.

(c) Provides that a certification issued by TDH before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section and by this Act to Chapter 421, Health and Safety Code.

(d) Provides that the change in law made by the addition by this Act of Section 5.127, Water Code, relating to the acceptance of environmental testing laboratory results by the commission applies only to environmental testing laboratory results submitted to the commission on or after the third anniversary of the date on which the commission publishes notice in the Texas Register that the commission's environmental laboratory testing program established under Chapter 5R, Water Code, as added by this Act, has met the standards of the National Environmental Laboratory Accreditation Conference.

**SECTION 19.04. CERTIFICATION OF WATER TREATMENT SPECIALISTS.** (a) Provides that on the effective date of this Act, the certain criteria are transferred to the commission.

(b) Provides that on the effective date of this Act, TDH rules relating to the certification of water treatment specialists are the rules of the commission until the commission adopts rules to govern that program.

**SECTION 19.05. PERFORMANCE-BASED REGULATION.** Sets forth provisions regarding performance based regulation by the commission.

**SECTION 19.06. FEES.** Sets forth provisions regarding commission fees.

**SECTION 19.07. REGULATORY FLEXIBILITY.** Sets forth provisions regarding submission of regulatory flexibility to the commission.

**SECTION 19.08. COMMISSIONER TRAINING.** Sets forth provisions regarding training requirements.

**SECTION 19.09. EXECUTIVE DIRECTOR.** Sets forth guidelines pertaining to the executive director.

**SECTION 19.10. INITIATION OF ACTION ON CITIZEN INFORMATION.** Sets forth provisions regarding initiation of enforcement action by the commission.

**SECTION 19.11. ADOPTION OF RULES REGARDING REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES.** Requires the commission to implement Section 361.119, Health and Safety Code.

**SECTION 19.12. CREATION OF OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL.** Sets forth provisions regarding the creation of the Office of Natural Reassure Public Interest Counsel.

(g) Provides that Section 1.22 of this Act takes effect January 1, 2002.

**SECTION 19.13. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS UNDERGROUND STORAGE TANKS.** Provides that the change in law made by Section 26.3476, Water Code, as added by this Act, applies only to an underground storage tank system that is installed, upgraded, or replaced on or after the effective date of this Act.

**SECTION 19.14. EFFECTIVE DATE.** Effective date: September 1, 2001, except as otherwise provided by this Act.