

## **BILL ANALYSIS**

Senate Research Center  
78R4315 MI-D

S.B. 455  
By: Armbrister  
Natural Resources  
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As Filed

### **DIGEST AND PURPOSE**

The Texas Commission on Environmental Quality (TCEQ) has consolidated all innovative regulatory programs into one office, changing the requirements for innovative regulatory programs and the use of regulatory flexibility, and establishing a new ranking system based on compliance history, based on the recommendations of the Sunset Advisory Committee. As proposed, S.B. 455 allows the use of these innovative programs upon showing of an equal environmental benefit with economic savings to the regulated entity. This bill also eliminates the requirement for a single uniform standard for all entities regulated by TCEQ and authorizes TCEQ to adopt standards that are uniform for sites that are similar in size and complexity and at which similar activities occur. Finally, this bill provides guidance for TCEQ concerning formulas, length of compliance history considered for ranking purposes, and placing information on the Internet.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 5.752(2) and (5), Water Code, as follows:

(2) Adds benefits to the environment that are equal to benefits that would result from compliance with applicable legal requirements under Texas Commission on Environmental Quality (TCEQ) jurisdiction and that also result in economic benefit to regulated entities to the list of actions for which incentives are provided within the definition of “innovative program.”  
Makes a conforming and nonsubstantive change.

(5) Redefines “strategically directed regulatory structure.”

SECTION 2. Amends Sections 5.753(a), (b), and (e), Water Code, as follows:

(a) Authorizes, rather than requires, TCEQ, by rule, to develop standards, rather than uniform standards, for evaluating site-specific compliance history that are uniform for sites that are similar in size and complexity and at which similar activities occur.

(b) Authorizes, rather than requires, the components of compliance history to include certain actions relating to compliance with applicable legal requirements under the jurisdiction of TCEQ. Adds the laws of the federal government and the United States Environmental Protection Agency to the list of actions relating to compliance with applicable legal requirements under the jurisdiction of TCEQ.

(e) Requires TCEQ, by rule, to establish a three-year period for site-specific compliance history, except as provided by other law or any requirement necessary to maintain federal program authorization.

SECTION 3. Amends Sections 5.754(a), (b), (c), (d), (g), (h), and (i), as follows:

- (a) Authorizes, rather than requires, TCEQ to establish a set of standards for the classification of a person's compliance history at a particular site.
- (b) Requires rules adopted under this section to, at a minimum, provide for three classifications of site-specific compliance history in a manner adequate to distinguish among certain poor performers, satisfactory performers, and high performers. Makes conforming changes.
- (c) Requires TCEQ, in classifying a person's compliance history at a particular site, to take certain actions. Deletes existing text relating to determining if a violation is of major, moderate, or minor significance.
- (d) Makes conforming changes.
- (g) Makes conforming changes.
- (h) Makes conforming changes.
- (i) Authorizes, rather than requires, TCEQ to consider the compliance history of a regulated entity at any of its sites when determining whether to grant the regulated entity's application for a permit or permit amendment for any new activity under TCEQ's jurisdiction to which this subchapter applies.

SECTION 4. Amends Section 5.755. Water Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

- (a) Requires TCEQ, by rule, to develop a strategically directed regulatory structure to provide certain incentives and benefits.
- (b) Makes conforming changes.
- (d) Requires the denominator, if TCEQ uses a formula to determine classifications for purposes of this subchapter, to include inspections and reports submitted to TCEQ that allege potential violations at the site.

SECTION 5. Amends Section 5.756, Water Code, by amending Subsection (b) and adding Subsection (e), as follows:

- (b) Makes conforming changes. Deletes existing Subdivision (3) related to whether a violation is major, moderate, or minor, as defined by TCEQ rule. Redesignates existing Subdivisions (4) and (5) as (3) and (4).
- (e) Provides that any material about a site that is placed on the Internet under this subchapter is subject to a quality assurance and quality control procedure, including an opportunity for the entity that holds the permit for the site to review the information before it is placed on the Internet.

SECTION 6. Amends Sections 5.758(a), (b), (d), and (h), Water Code, as follows:

- (a) Authorizes TCEQ by order to exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is as, rather than more, protective of the environment and the public health as the method or standard prescribed by the statute or TCEQ rule that would otherwise apply.

(b) Prohibits TCEQ from exempting an applicant under this section unless the applicant can present documented evidence of benefits to environmental quality or of economic benefit with equivalent protection of environmental quality that will result from the project the applicant proposes.

(d) Deletes existing modifier “specific” related to a description of the alternative method or standard.

(h) Requires TCEQ, in implementing the program of regulatory flexibility authorized by this section, to endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business, including economic benefit. Deletes existing text related to marketing the program and fixing and enforcing environmental standards.

SECTION 7. Repealer: Sections 5.753(d) (Compliant history components include notices of violations) and 5.757 (Coordination of Innovative Programs), Water Code.

SECTION 8. Effective date: September 1, 2003.