

## **BILL ANALYSIS**

Senate Research Center

H.B. 36  
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Finance  
9/18/2003  
Engrossed

### **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, which is modeled on the recommendations of the Sunset Advisory Commission. H.B. 36 allows the use of these innovative programs upon the 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. Finally, this bill provides guidance for TCEQ concerning formulas, length of compliance history considered for ranking purposes, and placing information on the Internet. The bill also eliminates the requirement that all innovative programs be consolidated into one office.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 7 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 5.753, Water Code, by amending Subsections (a), (b), and (e) and adding Subsection (f), as follows:

- (a) Requires the Texas Commission on Environmental Quality (TCEQ), consistent with other law and the requirements necessary to maintain federal program authorization, by rule to develop standards, rather than a uniform standard, for evaluating compliance history.
- (b) Authorizes, rather than requires, the components of compliance history to include:
  - (1) enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under TCEQ's jurisdiction;
  - (2) to the extent readily available to TCEQ, enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental laws of other states and the federal government, including the United States Environmental Protection Agency; and
  - (3) changes in ownership.

Deletes and amends existing provisions relating to certain components of compliance history.

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

(f) Provides that nothing in this section shall prevent TCEQ from considering any relevant compliance information, including notices of violation, in enforcement.

SECTION 2. Amends Sections 5.754(a)-(d) and (g)-(i), Water Code, as follows:

(a) Authorizes, rather than requires, TCEQ by rule to establish a set of standards for the classification of a person's compliance history at a particular site. Requires TCEQ to develop standards for classifying some categories of regulated entities. Requires TCEQ, in determining the types of regulated entities to classify, to consider, as one of the factors in making that determination, those regulated entities that are generally inspected at least annually.

(b) Requires rules adopted under this section to provide, at a minimum, for three classifications of site-specific compliance history in a manner adequate to distinguish among:

(1) poor performers, or regulated entities that in TCEQ's judgment perform in an unsatisfactory manner at a particular site, rather than below average;

(2) satisfactory performers, rather than average performers, or regulated entities that generally comply with environmental regulations at a particular site; and

(3) high performers, or regulated entities that have a compliance record at a particular site that demonstrates a high level of compliance with environmental regulations at that site, rather than an above-average compliance record.

(c) Adds to and amends actions required of TCEQ in classifying a person's compliance history.

(d) Requires TCEQ by rule to establish methods of assessing the site-specific compliance history of regulated entities for which it does not have adequate compliance information. Authorizes the methods to include requiring a compliance inspection at the site to determine an entity's eligibility for participation in a program that requires a high level of compliance.

(g) Makes conforming changes.

(h) Makes conforming changes.

(i) Requires TCEQ to consider the compliance history of and other relevant compliance information, including notices of violation, relating to a regulated entity when determining whether to grant the regulated entity's application for a permit or permit amendment for any activity under TCEQ's jurisdiction to which this subchapter applies.

SECTION 3. Amends Section 5.755(b), Water Code, to require the strategically directed regulatory structure to offer incentives based on a person's compliance performance, rather than history classification and any voluntary measures undertaken by the person to improve environmental quality.

SECTION 4. Amends Section 5.756, Water Code, by amending Subsection (b) and adding Subsection (e), to provide 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. Makes conforming changes.

SECTION 5. 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 TCEQ 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 protective, 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 and not inconsistent with federal law. Makes a conforming change.

(b) Prohibits TCEQ from exempting an applicant under this section unless the applicant can demonstrate to TCEQ that the applicant's proposed project will result in protection of environmental quality that is equal to or greater than the protection afforded by existing standards, rather than present to TCEQ documented evidence of benefits to environmental quality that will result from the project the applicant proposes.

(d) Deletes the term "specific" as a modifier for "description."

(h) Deletes and amends actions required of TCEQ in implementing the program of regulatory flexibility authorized by this section.

SECTION 6. Repealer: Sections 5.753(d) (relating to a standard for evaluating compliance history) and 5.757 (Coordination of Innovative Programs), Water Code.

SECTION 7. Requires TCEQ, not later than December 31, 2004, by rule to adopt standards for classification of regulated entities required by Section 5.754(a), Water Code, as amended by this Act.

SECTION 8. Effective date: upon passage or January 15, 2004.