

## **BILL ANALYSIS**

Senate Research Center

S.B. 1693  
By: Ogden  
Agriculture & Rural Affairs  
8/13/2009  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Livestock and poultry wastes from animal feeding operations are regulated to prevent dumping. Livestock and poultry wastes are also regulated when they are applied on land controlled by the operators of animal feeding operations. When these by-products are exported from the animal operations to private lands, they are treated like fertilizer and regulations for hauling and application are limited.

S.B. 1693 amends current law relating to the regulation of poultry facilities and poultry litter by the State Soil and Water Conservation Board and to the enforcement authority of the Texas Commission on Environmental Quality.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission (TNRCC) in SECTION 1 (Section 382.068, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Soil and Water Conservation Board in SECTION 2 (Section 26.302, Water Code) of this bill.

Rulemaking authority previously granted to TNRCC is modified in SECTION 4 (Section 5.1175, Water Code) and SECTION 6 (Section 26.0155, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.068, as follows:

Sec. 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS. (a) Defines "poultry facility" and "poultry litter."

(b) Requires the Texas Natural Resource Conservation Commission (TNRCC) to respond and investigate not later than 18 hours after receiving a second complaint against a poultry facility concerning odor associated with the facility or the application of poultry litter to land by the poultry facility, or a complaint concerning odor from a poultry facility at which TNRCC has substantiated odor nuisance conditions in the previous 12 months.

(c) Requires TNRCC, if after the investigation it determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, to issue a notice of violation.

(d) Requires TNRCC by rule or order to require the owner or operator of a poultry facility for which TNRCC has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with TNRCC. Requires that the compliance agreement include an

odor control plan that the executive director determines is sufficient to control odors.

(e) Requires the owner or operator of a new poultry facility to complete a poultry facility training course on the prevention of poultry facility odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. Requires the owner or operator of a new poultry facility to maintain records of the training and make the records available to TNRCC for inspection.

(f) Authorizes the poultry science unit of the Texas AgriLife Extension Service to charge an owner or operator of a poultry facility a training fee to offset the direct cost of providing the training.

SECTION 2. Amends Section 26.302, Water Code, by adding Subsections (b-2) and (b-3), as follows:

(b-2) Requires the State Soil and Water Conservation Board (board) in consultation with the Texas Commission on Environmental Quality by rule to establish criteria to determine the geographic, seasonal, and agronomic factors that the board will consider to determine whether a persistent nuisance odor condition is likely to occur when assessing the siting and construction of new poultry facilities.

(b-3) Prohibits the board from certifying a water quality management plan for a poultry facility located less than one-half of one mile from a business, off-site permanently inhabited residence, or place of worship if the presence of the facility is likely to create a persistent odor nuisance for such neighbors, unless the poultry facility provides an odor control plan the executive director determines is sufficient to control odors. Provides that this subsection does not apply to a revision of a previously certified and existing water quality management plan unless the revision is necessary because of an increase in poultry production of greater than 50 percent than the amount included in the existing certified water quality management plan for the facility or any poultry facility located more than one-half of one mile from a surrounding business, permanently inhabited off-site residence, or place of worship established before the date of construction of the poultry facility.

SECTION 3. Amends Subchapter H, Chapter 26, Water Code, by adding Sections 26.304 and 26.305, as follows:

Sec. 26.304. RECORDS OF SALE, PURCHASE, TRANSFER, OR APPLICATION OF POULTRY LITTER. (a) Requires a poultry facility that sells or transfers poultry litter for off-site application to maintain, until the second anniversary of the date of sale or transfer, a record regarding certain information.

(b) Requires a person that purchases or obtains poultry litter for land application to maintain until the second anniversary of the date of application a signed and dated proof of delivery document for every load of poultry litter applied to land. Requires the land owner to note on the document the date(s) on which the poultry litter was land applied.

(c) Provides that Subsection (b) does not apply to poultry litter that is taken to a composting facility, used as a bio-fuel, used in a bio-gasification process, or otherwise beneficially used without being applied to land.

Sec. 26.305. INSPECTION OF RECORDS. Authorizes TNRCC to inspect any record required to be maintained under this subchapter.

SECTION 4. Amends Section 5.1175, Water Code, as follows:

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) Authorizes, rather than requires, TNRCC by rule to allow a person who owes a monetary civil or

administrative penalty, rather than a small business that owes a monetary civil or administrative penalty, imposed for a violation of law within TNRCC's jurisdiction or for a violation of a license, permit, or order issued or rule adopted by TNRCC to pay the penalty in periodic installments. Requires that the rule provide a procedure for a person, rather than for a qualified small business, to apply for permission to pay the penalty over time.

(b) Redesignates Subsection (c) as Subsection (b). Prohibits the period over which the penalty may be paid from exceeding 36 months, rather than 12 months. Deletes text of existing Subsection (b) requiring the rule to classify small businesses by their net annual receipt and number of employees and prohibiting a business that is a wholly owned subsidiary of a corporation from qualifying as a small business under this section.

SECTION 5. Amends Section 7.002, Water Code, to authorize TNRCC to delegate to the executive director the authority to issue an administrative order, including an administrative order that assess penalties or orders corrective measures, to ensure compliance with the provisions of this code and the Health and Safety Code within TNRCC's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions.

SECTION 6. Amends Section 26.0135(h), Water Code, to delete existing text requiring TNRCC to apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section from users of water and wastewater permit holders in the watershed according to the records of TNRCC generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Deletes existing text requiring that the rules ensure that program funds are equitably apportioned among basins. Deletes existing text requiring that the rules concerning the apportionment and assessment of reasonable costs provide for a recovery of not more than \$5,000,000 annually. Deletes existing text providing that costs recovered by TNRCC are to be deposited to the credit of the water resource management account and is authorized to be used only to accomplish the purpose of this section. Deletes existing text requiring TNRCC to apply not more than 10 percent of the costs recovered annually toward TNRCC's overhead costs for the administration of this section and the implementation of regional water quality assessments. Deletes existing text requiring TNRCC, with the assistance and input of each river authority, to file a written report accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.

SECTION 7. Makes application of the change in law made by this Act to Section 382.068(e), Health and Safety Code, prospective.

SECTION 8. Effective date: September 1, 2009.