

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 125
By: Legler et al. (Jackson)
Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires a rule proposed by the Texas Commission on Environmental Quality (TCEQ) to be a major environmental rule in order for an impact analysis statement to be drafted by TCEQ describing the anticipated effects of the proposed rule. However, TCEQ does not often adopt major environmental rules under the statutory definition. C.S.H.B. 125 amends the Water Code to require TCEQ to draft an impact analysis describing the anticipated effects of each proposed environmental rule to expand application of the statute and ensure that the requirement is observed.

C.S.H.B. 125 amends current law relating to the regulatory analysis of rules proposed by the Texas Commission on Environmental Quality.

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 Subchapter D, Chapter 5, Water Code, by adding Section 5.1031, as follows:

Sec. 5.1031. ADOPTION OF ENVIRONMENTAL RULES. (a) Defines, in this section "cost," "environmental effect," "environmental rule," and "small business."

(b) Requires the Texas Commission on Environmental Quality (TCEQ), before adopting an environmental rule, to conduct a regulatory analysis that weighs the costs and environmental effects expected to result from implementation of and compliance with the rule.

(c) Requires TCEQ, when giving notice of an environmental rule, to incorporate into the fiscal note required by Section 2001.024 (Content of Notice), Government Code, a draft impact analysis describing the anticipated effects of the proposed rule. Requires that the draft impact analysis, at a minimum:

- (1) identify the problem the rule is intended to address;
- (2) identify the environmental effects that TCEQ expects to result from implementation of and compliance with the rule, including the projected level of reduction of pollutants or contaminants in air, water, and soil media;
- (3) identify and describe the costs that TCEQ expects that state agencies, local governments, the public, and the affected regulated entities, other than small businesses, will incur from implementation of and compliance with the rule; and

(4) identify and describe in a separate economic impact analysis the costs that TCEQ expects that small businesses will incur from implementation of and compliance with the rule.

(d) Requires TCEQ, in identifying the environmental effects of a rule under Subsection (c)(2), to include the modeled improvement for the criteria pollutant design value expected from implementation of the rule, if the rule will be included in the state implementation plan.

(e) Requires TCEQ, after considering public comments submitted under Section 2001.029 (Public Comment), Government Code, and determining that a proposed rule should be adopted, to prepare a final regulatory analysis that complies with Section 2001.033 (State Agency Order Adopting Rule), Government Code.

(f) Authorizes a person who submitted a comment in accordance with Section 2001.029, Government Code, to challenge the validity of an environmental rule that is not proposed and adopted in strict compliance with the procedural requirements of this section by filing an action for declaratory judgment as provided by Section 2001.038 (Declaratory Judgment), Government Code, not later than the 30th day after the effective date of the rule. Provides that if the court determines that an environmental rule was not proposed and adopted in strict compliance with the procedural requirements of this section, the rule is invalid.

(g) Prohibits the requirements of this section from being construed so as to cause a delay or to prevent the timely implementation of any federal requirements.

SECTION 2. Provides that the change in law made by this Act applies only to a rule proposed by TCEQ for which notice is given under Sections 2001.023 (Notice of Proposed Rule) and 2001.024, Government Code, on or after December 1, 2011.

SECTION 3. Effective date: September 1, 2011.