

TCEQ SUNSET LEGISLATION - SUMMARY

HB 2694 by SMITH and SB 657 by HUFFMAN

Section 1.02

- Continues the Texas Commission on Environmental Quality for 12 years to 2023.

Section 1.03

- Requires that an appointed member of TCEQ (Commissioners) resign their position if contributions are accepted for a campaign for an elected office. Vacancy to be filled by Governor's appointment as provided by law

Section 1.04

- Applies the standard Sunset across-the-board requirement for the commission to develop a policy regarding negotiated rulemaking (NR) and alternative dispute resolution (ADR).
- Agency currently utilizes ADR frequently and NR infrequently; however, neither processes are in statute or rules at this time.

Section 1.05

- Provides direction to TCEQ to focus agency efforts on the most hazardous dams in the state.

Section 2.01

- Transfers the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission (RRC).
- Outlines procedures for determining the depth of well casings during oil & gas drilling activities to protect fresh water.

Section 2.02

- Grants RRC authority to issue a "letter of determination" stating the needed depth for the well casings associated with oil & gas drilling.
- Authorizes the RRC to collect a fee for issuing the letter of determination, as well as a separate fee for an expedited process.

Section 2.03

- Requires RRC to work with other agencies to study and evaluate electronic access to geologic data & surface casing depths.
- TCEQ currently is digitizing this information by county.

Section 2.04

- Requires RRC to issue a letter of determination stating that drilling and using a disposal well injecting oil and gas waste into the subsurface will not endanger fresh water.

Section 2.05

- Addresses permits for geologic storage of anthropogenic carbon dioxide (CO₂). RRC could not issue the permit until TCEQ sends a letter of determination.
- Requires RRC, not TCEQ, to review certain elements associated with performance requirements. RRC, not TCEQ, would draft rules to implement requirements for the issuance of the letter of determination.

Section 2.06

- Repeals TCEQ's authority to assess fee for expedited letter of determination.

Section 2.07

- Requires RRC to adopt rules to implement changes in Article 2 (letters of determination) by March 1, 2012.
- Current TCEQ rules, policy and procedures associated with these activities remain in effect until RRC adopts its rule.

Section 3.01

- Charges the Executive Director with providing assistance and education to the public on environmental matters under the agency's jurisdiction. The Executive Director would create a centralized point of contact for information, assessing public concerns and responding to the public.

Section 3.02

- Focuses OPIC's efforts on representing the public interest in matters before the Commission.
- Repeals as a duty of OPIC its role in ensuring that the agency is responsive to citizen concerns and consumer protection.

Section 3.03

- Requires OPIC to annually report to the commission on their performance, budget needs, and legislative and regulatory recommendations.

Section 3.04

- Requires the commission to define, by rule, factors OPIC will consider in representing the public interest.

Section 4.01

- Requires the commission to develop a method, in place of the current uniform standard, for evaluating compliance history that ensures consistency in the evaluation.
- Allows the commission, in developing the method, to account for differences among regulated entities. The commission would be allowed to consider information relating to a regulated entity's complexity including the complexity of the regulatory requirements applicable to the entity, the severity of noncompliance, and any other positive compliance factors related to the regulated entity.

- Provides discretion for the commission to exclude or include any orders issued without penalties, shutdown orders, or other punitive sanctions as components in a regulated entity's compliance history.

Section 4.02

- Deletes language requiring the commission to assess the compliance history of entities for which TCEQ does not have adequate compliance information.

Section 4.03

- Requires the TCEQ to adopt a general enforcement policy by rule; update, assess and publicly adopt specific enforcement policies regularly; and make those policies available to the public through posting on the web page.

Section 4.04

- Establishes a minimum administrative penalty of \$50 and increases the maximum to \$25,000 for all penalties, except for several specified areas of jurisdiction.
- Establishes minimum of \$50 and a maximum of \$5,000 for Occupational Licensing, Plumbing Fixtures and Used Oil related penalties.

Section 4.05

- Adds language to allow local governments to apply penalty money assessed by the commission toward the cost of compliance in the form of a Supplemental Environmental Project (SEP).

Section 4.06

- Allows the commission to assess penalties of not less than \$100 or greater than \$5,000 on persons associated with water rate penalties.

Section 4.07

- Reinstates common carrier liability to prevent delivery or deposit of regulated substance into underground storage tanks (UST) which have not self-certified to be compliant and have not been issued a delivery certificate by TCEQ.

Section 4.08

- Expands the use of the PST remediation fee to remove underground or aboveground storage tanks if certain criteria are met including out-of-compliance and out-of-service status of tanks, contamination risk, and financial inability of the tank owner or operator.

Section 4.09

- Allows the use of the PST remediation fee for investigation, clean ups or corrective actions.

Section 4.10

- Reauthorizes the PST remediation fee, changes the current fee levels to caps and authorizes the Commission to set fees in rule.

Section 4.11

- (a) requires rules related to compliance history be adopted no later than September 1, 2012; and
- (b) & (c)- sets effective date of 09/01/11 for penalties & common carrier requirements.

Section 5.01

- Requires water right holders to maintain monthly water use reports, and make this information available to the commission on request.
- The commission may only request the monthly water use information during a drought or other emergency shortages of water.
- The monthly use information is not required when submitting annual water use reports.

Section 5.02

- Authorizes that in a “period of drought or other emergency shortage of water” the executive director may temporarily suspend a water right and adjust the allocation of water between water right holders.
- In making such orders, the executive director must ensure that any action taken maximizes the beneficial use of water, minimizes the impact on water right holders, and prevents the waste of water.
- Requires adoption of rules.

Section 5.03

- Directs the executive director to evaluate at least once every five years whether a watermaster should be appointed in water basins not covered under the jurisdiction of a watermaster. The results of the evaluation and subsequent recommendations would be reported to the commission.
- Directs the commission to determine the criteria or risk factors to be considered when evaluating the need for a watermaster.
- Requires the commission to include the findings and recommendations in the Biennial Report to the Legislature.

Section 6.01

- Requires compact waste disposal fees adopted by the commission for low level radioactive waste (LLRW) must include funds be sufficient to support the activities of the LLRW compact commission.

Section 6.02

- Creates a new account TLLRWDC Account in the general revenue fund.

- Requires the TCEQ to deposit in the new account that portion of the compact waste disposal fee calculated to support the activities of the LLRW compact commission.
- Requires that money in the new account may be appropriated only to support the operations of the LLRW compact commission.

Section 6.03 & 6.04

- Eliminates three existing water and wastewater utility application fees and adjusts the Water Utility Regulatory Assessment Fee.
- Adds that revenue collected from the Water Utility Regulatory Assessment Fee may be appropriated to the TCEQ and the PUC to pay for costs related to regulating districts, WSCs, affected counties, and public utilities.

Section 7.01

- Requires the agency, when provided an electronic copy of a water rate case, to make it available to the public at a reasonable cost.

Section 8.01

- Amends reference to the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

Section 8.02 – 8.06

- Abolishes the Texas On-Site Wastewater Treatment Research Council (TOWTRC).
- Transfers duties previously performed by TOWTRC to TCEQ.
- Requires that revenue from the Texas Onsite Waste Water Treatment Council (TOWTRC) fee be deposited to the Water Resource Management Account #153.

Section 8.07

- Repealers

Section 8.08

- Establishes an effective date of 09/01/11 for TCEQ to assume TOWTRC administrative responsibilities.

Section 9.01

- Sets an effective date of 09/01/11.