

SUBJECT: Allowing TCEQ to accept data from certain on-site or in-house laboratories

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 5 ayes — Bonnen, Crownover, Chisum, Flores, W. Smith

0 nays

2 absent — Kuempel, West

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: For — Jon Fisher, Texas Chemical Council

Against — None

BACKGROUND: Water Code, sec. 5.127 allows the Texas Commission on Environmental Quality (TCEQ) to accept data or analysis from an environmental testing laboratory for use in commission decisions on permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the lab is accredited by the commission or if the lab is:

- an on-site or in-house environmental testing lab periodically inspected by the commission;
- a lab accredited under federal law; or
- an unaccredited lab, if the data or analysis is necessary for emergency response and no alternatives are available.

DIGEST: SB 934 would amend Water Code, sec. 5.127 to allow TCEQ to accept data or analysis from an on-site or in-house environmental testing laboratory:

- if the lab was located in another state and accredited or periodically inspected by the other state;
- if the lab was performing work for another company that operated a unit on the same site; or
- if the lab was performing work without compensation for a government agency or charitable organization.

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The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

SB 934 would clarify that TCEQ could accept data or analysis from certain in-house or on-site environmental testing labs. Sunset legislation enacted by the 77th Legislature, HB 2912 by Bosse et al., imposed restrictions on what labs TCEQ could accept data and analysis from for use in agency decisions. Because some questions have arisen since the restrictions were imposed, the bill would clarify the circumstances under which TCEQ could accept data from an in-house or on-site lab.

The bill would enable TCEQ to accept data from an in-house lab in another state if the lab was accredited or inspected by that state. Some companies operating permitted facilities in Texas have sophisticated labs in other states with specialized testing capabilities. These companies should be able to use their own labs to perform specialized tests, instead of being forced to pay for these expensive tests at commercial labs. Moreover, an eligible lab would have to be accredited or inspected by the other state.

The bill also would permit the agency to accept data from labs performing work for another company or for a government agency or charitable organization. For example, DuPont might own a permitted 150-acre facility on which four or five other companies also operated individual production units. The bill would ensure that data from DuPont's on-site lab would be acceptable for testing performed on the other companies' units. In addition, the bill would specify that TCEQ could accept data from labs performing work without an expectation of profit, such as in a partnership with a state agency.

The bill would be permissive. It would enable, rather than require, TCEQ to accept data or analysis from certain labs. If another state did not adequately inspect in-house or on-site labs, TCEQ would not have to accept data from those labs or could enact rules specifying standards that an out-of-state in-house lab would have to meet before TCEQ would accept data or analysis.

**OPPONENTS  
SAY:**

The bill could allow TCEQ to accept data from in-house labs in states with less stringent inspection or accreditation standards than Texas. Other states may not have the financial resources to perform adequate lab inspections, especially on sophisticated or specialized labs.

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Because of the structure of the statute that would be amended, it is not clear that TCEQ would be required to inspect on-site labs performing work for other companies located on the same site. The bill should specify that these labs would have to be inspected before TCEQ could accept data or analysis.