

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 766  
By: Brown  
Natural Resources  
4/1/1999  
Committee Report (Substituted)

### **DIGEST**

Currently Texas law requires a person to obtain a permit from the Texas Natural Resource Conservation Commission (commission) prior to beginning work on the construction of a new facility or modification of an existing facility which may emit air contaminants. C.S.S.B. 766 authorizes the commission to issue a voluntary emissions reduction permit to facilities not subject to the requirements of obtaining permits.

### **PURPOSE**

As proposed, C.S.S.B. 766 regulates the issuance of certain permits for the emission of air contaminants.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 2 (Section 382.051(a), Health and Safety Code), SECTION 3 (Section 382.05101, Health and Safety Code), SECTION 5 (Sections 382.05193(d), (g), and (i), Sections 382.05194(b), (e), and (g), and Sections 382.05195(a) and (b), Health and Safety Code) and SECTION 8 (Section 382.0629(b), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subdivision (9) Section 382.003, Health and Safety Code, to redefine “modification of existing facility.”

SECTION 2. Amends Sections 382.051(a) and (b), Health and Safety Code, to authorize the Texas Natural Resource Conservation Commission (commission) to issue a permit to operate an existing facility pursuant to a voluntary emissions reduction permit. Authorizes the commission to issue a standard permit for similar facilities, rather than numerous facilities subject to Section 382.0518, Health and Safety Code. Authorizes the commission, by rule, to issue a permit for types of facilities that will not significantly contribute air contaminants to the atmosphere, and a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519, Health and Safety Code. Makes conforming changes.

SECTION 3. Amends Chapter 382C, Health and Safety Code, by adding Section 382.05101, as follows:

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. Authorizes the commission to develop, by rule, the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which no permit under Section 382.05181 or 382.0519, standard permit under section 382.0518 or permit by rule under Section 382.05182 will be required.

SECTION 4. Amends Sections 382.0511(a) and (c), Health and Safety Code, to authorize the commission to consolidate standard permits and permits by rule, into a single permit. Authorizes the commission to authorize changes in a federal source to proceed before the owner or operator obtains a federal source operating permit or revisions to a federal operating permit if the changes are de minimis under Section 382.05101 or the operator has obtained a preconstruction permit or permit amendment required by Section 382.0518, or is operating under a standard permit under Section 382.05194, a permit by rule under Section 382.05195, or an exemption allowed under Section 382.057, Health and Safety Code. Deletes text regarding a certain date of issuance of a permit and rulemaking.

SECTION 5. Amends Chapter 382C, Health and Safety Code, by adding Sections 382.0519, 382.05191-382.05195, as follows:

Sec. 382.0519. VOLUNTARY EMISSION REDUCTION PERMIT. Authorizes the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit under Section 382.0518(g) to apply for a permit to operate that facility under this section. Requires the commission to grant within a reasonable time a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment, the commission finds that the facility will use an air pollution control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility. Prohibits the commission from granting the permit under this section, if the commission finds that the emissions from the facility will contravene the standards under Subsection (b), or the intent of this chapter, including protection of the public's health and physical property. Requires the person planning the modification to comply with Section 382.0518, before work is begun on the modification of a facility previously permitted under this section. Authorizes the deferral of required reductions, under certain conditions. Requires deferral to be based on a certain prioritization necessary to meet local, regional, and statewide air quality needs.

Sec. 382.05191. VOLUNTARY EMISSION REDUCTION PERMIT: NOTICE AND HEARING. Requires an applicant for a permit under Section 382.0519 to publish notice of intent to obtain the permit in accordance with Section 382.056. Authorizes the commission to authorize an applicant for a permit for a facility which constitutes or is part of a small business stationary source as defined in Section 382.0365(g)(2) to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements. Authorizes the commission to afford an opportunity for a public hearing and the submission of public comment and send notice of a decision on an applicant for a permit under Section 382.0519 in the same manner as provided by Section 382.0561 and 382.0562. Provides that a person affected by a decision of the commission to issue or deny a voluntary emission reduction may move for rehearing and is entitled to judicial review under Section 382.032.

Sec. 382.05192. VOLUNTARY EMISSION REDUCTION PERMITS: REVIEW AND RENEWAL. Requires review and renewal of permits issued under Section 382.0519 to be conducted in accordance with Section 382.055.

Sec. 382.05193. MULTIPLE PLANT PERMIT. Authorizes the commission to issue a multiple plant permit for multiple plant sites which are owned or operated by the same person or persons under common control if the commission finds certain actions have been taken. Prohibits a permit issued under this section of emissions from any of the facilities authorized under the permit that exceed that facility's highest historic annual rate, or permit authorized levels. Requires the commission to publish notice of a proposed multiple plant permit, and sets forth notification procedures. Authorizes the commission, by rule, to require additional notice. Sets forth required notification information. Sets forth provisions for public meetings for existing facilities. Requires the commission to issue a written response to public comments under certain conditions. Requires the commission to establish, by rule, procedures for multiple plant permit application approval. Sets forth circumstances wherein a permit is not subject to Chapter 2001, Government Code. Authorizes the commission to adopt rules to administer and delegate administration of this section.

Sec. 382.05194. STANDARD PERMIT. Authorizes the commission to issue a standard permit for new or existing similar facilities if the commission finds that certain actions can be taken. Requires the commission to publish notice in certain publications in the state designated by the commission's rule. Authorizes the commission, by rule, to require additional notice to be given. Requires the notice to include an invitation for written comments by the public to the commission regarding the proposed standard permit and to be published not later than a certain date. Requires the commission to hold a public meeting to provide an additional opportunity for public comment. Requires the commission to give notice described in Subsection (b) not later than a certain date before the date of the meeting. Requires the commission to issue a written response to comments on the permit at the same time that the commission issues or denies the permit, if the commission receives public comment relating to issuance of a standard permit. Requires the commission to establish the procedures for application and approval for the use of a standard permit. Provides that the issuance, amendment, or revocation of a standard permit by the commission is not subject to Chapter 2001, Government Code. Authorizes the commission to adopt rules as necessary to implement and administer this section and to delegate to the executive director under Section

382.061 the authority to issue, amend, or revoke a standard permit.

Sec. 382.05195. PERMITS BY RULE. Authorizes the commission to adopt permits, by rule, for certain types of facilities if it is found on investigation that certain types of facilities will not make a significant contribution of air contaminants to the atmosphere. Prohibits the commission from adopting a permit, by rule, authorizing any facility defined as a "major source" under the federal Clean Air Act or regulations adopted under that Act. Provides that nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a). Requires the commission to adopt rules specifically defining the terms and conditions for a permit by rule under this section.

SECTION 6. Amends Section 382.057(a), Health and Safety Code, to delete text regarding facilities.

SECTION 7. Amends Section 382.058, Health and Safety Code, as follows:

Sec. 382.058. New heading: PROVISIONS RELATING TO COMMISSION PERMITS BY RULE OR STANDARD PERMITS FOR CONSTRUCTION OF CERTAIN CONCRETE PLANTS. Prohibits a person from beginning construction on any concrete plant that performs wet batching, or central mixing under a standard permit under Section 382.05194 or a permit by rule, rather than an exemption, adopted by the commission under Section 382.05195, rather than Section 382.057, unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

SECTION 8. Amends Section 382.062(b), Health and Safety Code, to authorize the commission to adopt rules relating to charging and collecting a fee for an exemption for a permit, a permit by rule, or for a voluntary emission reduction permit, for a multiple plant permit. Makes conforming changes.

SECTION 9. Authorizes the commission to adopt as soon as practicable after the effective date of this Act, any rules necessary to implement the changes in law made by this Act.

SECTION 10. Requires the commission to prepare and distribute to the governor, lieutenant governor, the speaker of the house of representatives, the chairman of the Senate Committee on Natural Resources, and the chairman of the House Committee on Environmental Regulations a report on the number of companies that have obtained or applied for a permit under Section 382.0519, Health and Safety Code, as added by this Act, and the reductions in emissions anticipated to result from issuance of such permits not later than January 15, 2001.

SECTION 11. Prohibits the commission from initiating enforcement actions against a person who files an application for a certain permit on or before August 31, 2001. Limits the application of this section to exclude a facility modification that occurs after March 1, 1999.

SECTION 12. Emergency clause.

Effective date: upon passage.

## **SUMMARY OF COMMITTEE CHANGES**

### **SECTION 2.**

Amends Section 382.051(b)(3), Health and Safety Code, to delete text regarding Section 382.0518, Health and Safety Code.

### **SECTION 4.**

Amends Section 382.0511(c), Health and Safety Code, to add text regarding permits.

### **SECTION 5.**

Redesignates existing SECTION 6 as SECTION 5, and deletes existing SECTION 5.

Amends Section 382.0519, Health and Safety Code, by adding Subsection (e), regarding requirement of a deferral, and making nonsubstantive changes.

Amends Section s382.05193(a)-(c), Health and Safety Code, by adding Subsections (d)-(i), to add text regarding common control, authorized emission levels, required public notification, commission rulemaking authority, and multiple plant permit application and approval.

Redesignates Section 382.05181 as Section 382.05194, Health and Safety Code. Makes nonsubstantive changes.

Redesignates Section 382.05182 as Section 382.05195, Health and Safety Code. Clarifies commission rulemaking authority.

### **SECTION 6.**

Redesignates existing SECTION 7 as SECTION 6.

### **SECTION 7.**

Redesignates existing SECTION 8 as SECTION 7, creates a new heading, and makes conforming changes.

### **SECTIONS 8-10.**

Redesignated from existing SECTIONS 9-11.

### **SECTION 11.**

Adds text regarding the initiation of enforcement actions, and the application of this section.