

BILL ANALYSIS

Senate Research Center
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S.B. 318
By: Harris
Natural Resources
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DIGEST AND PURPOSE

Periodically, state agencies undergo a review by the Sunset Advisory Commission (SAC). As a result of this review, SAC recommends either changes to the agency or the abolishment of the agency. During the interim of the 76th Legislature, the Texas Natural Resource Conservation Commission (TNRCC) went through the Sunset process. As proposed, S.B. 318 continues TNRCC for 12 years and makes changes to the statutes that were recommended by SAC.

RULEMAKING AUTHORITY

Rulemaking Authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1.12 (Section 5.127, Water Code), SECTION 1.18 (Section 5.228, Water Code), SECTION 1.20 (Section 7.0025, Water Code), SECTION 2.13 (Section 5.662, Water Code), SECTION 2.16 (Section 5.665, Water Code), SECTION 2.19 (Section 5.668, Water Code), SECTION 4.01 (Sections 5.752, 5.754, 5.756, and 5.757, Water Code), SECTION 4.06 (Section 382.0216, Health and Safety Code), SECTION 5.01 (Sections 5.802, 5.804, and 5.805, Water Code), SECTION 6.01 (Section 341.102, Health and Safety Code), SECTION 7.02 (Section 34.009(f), Water Code), SECTION 7.03 (Section 366.076, Health and Safety Code), SECTION 8.10 (Section 26.040, Water Code), SECTION 8.12 (Section 27.051, Water Code), SECTION 8.16 (Section 361.079(a), Health and Safety Code), SECTION 8.20 (Section 361.082, Health and Safety Code), SECTION 8.21 (Section 361.084(a), Health and Safety Code), SECTION 8.23 (Section 361.089, Health and Safety Code), and SECTIONS 9.01, 9.02, 9.03, 9.04, 9.07, AND 9.09, of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE I. ADMINISTRATIVE PROVISIONS.

SECTION 1.01. Amends Section 5.014, Water Code, to continue the Texas Natural Resource Conservation Commission (commission) for 12 years, establishing the next Sunset date as September 1, 2013, rather than 2001.

SECTION 1.02. Amends Section 5.052(c), Water Code, to update standard sunset language requiring non-discriminatory appointment to the commission.

SECTION 1.03. Amends Section 5.053(a), Water Code, to update standard sunset language prohibiting a person from being a public member of the commission if the person or the person's spouse is regulated by the agency or otherwise has financial ties to the agency or regulated industry.

SECTION 1.04. Amends Chapter 5C, Water Code, by adding Section 5.0535, as follows:

Sec. 5.0535. REQUIRED TRAINING PROGRAM FOR COMMISSION MEMBERS.
Adds standard sunset language requiring members of the commission to complete training before assuming their duties.

SECTION 1.05. Amends Section 5.054, Water Code, to update standard sunset language specifying the grounds for removing a commission member and providing for notifying the attorney general that a potential ground for removal exists.

SECTION 1.06. Amends Sections 5.058(a)-(d), Water Code, to require the governor to designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. Deletes text regarding chairman serving until the governor designates a different chairman. Makes conforming changes.

SECTION 1.07. Amends Sections 5.059 and 5.060, Water Code, as follows:

Sec. 5.059. Defines “Texas trade association.” Updates standard Sunset language prohibiting commission members or their spouses and exempt employees or their spouses from being an officer or employee of a related Texas trade association.

Sec. 5.060. Updates standard sunset language regarding lobbying prohibitions.

SECTION 1.08. Amends Chapter 5D, Water Code, by adding Section 5.1031, as follows:

Sec. 5.1031. **RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING PROHIBITED.** Adds standard sunset language prohibiting the commission from adopting rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices. Prohibits the commission, in its rules to prohibit false, misleading, or deceptive practices, from including a rule that meets certain criteria.

SECTION 1.09. Amends Section 5.107, Water Code, as follows:

Sec. 5.107. New heading: **ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES.** Authorizes the commission to create and consult with advisory committees, work groups, or task forces, rather than councils, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission considers appropriate. Requires the commission to identify affected groups of interested persons for advisory committees, work groups, and task forces and make reasonable attempts to have balanced representative on all appointed committees, work groups, and task forces. Provides that this subsection does not require the commission to ensure that all representatives attend a scheduled meeting. Prohibits a rule or other action of the commission from being challenged solely because of the composition of an appointed advisory committee, work group, or task force. Requires the commission to monitor the composition and activities of advisory committees, work groups, or task forces appointed by the commission or formed at the staff level and maintain that information in a form and location that is easily accessible to the public.

SECTION 1.10. Amends Chapter 5D, Water Code, by adding Section 5.1115, as follows:

Sec. 5.1115. **RECORD OF OUTSIDE CONTACT BY COMMISSION MEMBER OR STAFF.** Requires each commission member and each commission staff member with discretionary authority over any aspect of a permit or decision, rulemaking, or other regulatory matter pending before or within the jurisdiction of the commission to keep a written record of each communication with any person other than a commission member or commission employee regarding a regulatory matter. Requires the written record to state certain information. Provides that a written record prepared as required by this section is subject to disclosure under the public information law, Chapter 552 (Public Information), Government Code. Provides that this section does not apply to an unplanned communication that occurs outside commission offices.

SECTION 1.11. Amends Chapter 5D, Water Code, by adding Sections 5.1191-5.1193, as follows:

Sec. 5.1191. RESEARCH COORDINATION; REPORT. Requires the commission to coordinate and facilitate research needs and efforts with the state's scientific and academic communities and to administer grants or contracts if the money is appropriated. Requires the commission to include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and other results of particular research projects conducted. Provides that this section does not authorize the commission to initiate or direct the research efforts of other entities.

Sec. 5.1192. RESEARCH ADVISORY BOARD. Authorizes the commission to appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate and make recommendations regarding research topics specific to this state. Requires the research advisory board to include certain representatives.

Sec. 5.1193. RESEARCH MODEL. Requires the commission to develop a research model to identify the commission's research needs and to obtain funding for research projects. Requires the research model to provide for commission staff to work with certain representatives to develop long-range research plans and to identify and pursue specific research projects. Requires commission requests for proposals to be developed according to research needs identified through the use of the model.

SECTION 1.12. Amends Chapter 5D, Water Code, by adding Section 5.127, as follows:

Sec. 5.127. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS. Authorizes the commission, except as provided by this section, to accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission. Authorizes the commission by rule to exempt from the accreditation requirement an on-site or in-house environmental testing laboratory if the laboratory is inspected as part of a regulated entity's general inspection process.

SECTION 1.13. Amends Chapter 5E, Water Code, by adding Section 5.1765, as follows:

Sec. 5.1765. PUBLICATION OF INFORMATION REGARDING COMPLAINT PROCEDURES AND POLICIES. Requires the commission to establish a process for educating the public regarding the commission's complaint policies and procedures. Requires the commission, as part of the public education process, to make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public.

SECTION 1.14. Amends Sections 5.176 and 5.177, Water Code, as follows:

Sec. 5.176. Requires the commission to maintain a file on each written complaint filed with the commission. Deletes text regarding an entity regulated by the commission. Requires the file to include certain information. Makes conforming changes.

Sec. 5.177. New heading: NOTICE OF COMPLAINT PROCEDURES; NOTICE OF INVESTIGATION STATUS. Requires the agency to provide to the person filing the complaint and to each person who is the subject of the complaint a copy of the commission's

policies and procedures relating to compliant investigation and resolution. Deletes text regarding a written complaint. Requires the commission, at least quarterly until final disposition of the complaint, to notify filing the complaint and each person who is subject of the complaint of the status of, rather than parties to, the investigation, rather than complaint, unless the notice would jeopardize an undercover investigation. Makes conforming changes.

SECTION 1.15. Amends Chapter 5E, Water Code, by adding Sections 5.1771 and 5.1772, as follows:

Sec. 5.1771. COORDINATION OF COMPLAINT INVESTIGATIONS WITH LOCAL ENFORCEMENT OFFICIALS: TRAINING. Requires the commission to enhance coordination of complaint investigations with local officials. Requires the commission to train local officials in investigating complaints and enforcing environmental laws and sets forth guidelines concerning training. Authorizes the commission to recover the cost of training.

Sec. 5.1772. AFTER-HOURS RESPONSE TO COMPLAINTS. Requires the commission to adopt and implement a policy that allows field inspectors to work flexible hours in order to provide response to complaints during periods outside regular business hours. Provides that this section does not require or authorize certain conditions.

SECTION 1.16. Amends Section 5.227, Water Code, to update standard sunset language requiring an equal employment policy that is reviewed by the Texas Commission on Human Rights.

SECTION 1.17. Amends Chapter 5F, Water Code, by adding Section 5.2275, as follows:

Sec. 5.2275. STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108B (State Employee Incentive Program), Government Code.

SECTION 1.18. Amends Section 5.228, Water Code, to authorize, rather than require, the executive director to be named a party in hearings before the commission or the State Office of Administrative Hearings for the sole purpose of providing information to complete the administrative record. Requires the commission by rule to specify the factors the executive director is required to consider in determining, case by case, whether to be a party in a contested case. Prohibits the executive director or the executive director's designated representative from rehabilitating the testimony of a witness unless the witness is a commission employee testifying for the sole purpose of providing information to complete the administrative record. Prohibits the executive director or the executive director's designated representative from assisting a permit applicant in meeting its burden of proof in a hearing before the commission or the State Office of Administrative Hearings unless the permit applicant fits a category of permit applicant that the commission by rule has designated as eligible to receive assistance. Requires the commission to adopt rules establishing categories of permit applicants eligible to receive assistance.

SECTION 1.19. Amends Sections 5.273 and 5.274, Water Code, as follows:

Sec. 5.273. Authorizes the counsel to recommend needed legislative and regulatory changes.

Sec. 5.274. New heading: STAFF; OUTSIDE TECHNICAL SUPPORT. Authorizes the counsel to obtain and use outside technical support to carry out its functions under this code.

SECTION 1.20. Amends Chapter 7A, Water Code, by adding Section 7.0025, as follows:

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING EVIDENCE PROVIDED BY PRIVATE INDIVIDUAL. Authorizes the commission to initiate an

enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on evidence it receives from a private individual if that evidence, in the commission's judgment, meets the requirements of the Texas Rules of Evidence. Authorizes the executive director or the executive director's designated representative to evaluate the value and credibility of evidence received from a private individual and the merits of any proposed enforcement action based on that evidence. Authorizes the commission by rule to adopt criteria for the executive director to use in evaluating the value and credibility of evidence received from private individual and for use of that evidence in an enforcement action. Authorizes a private individual who submits evidence on which the commission relies for all or part of an enforcement case to be called to testify in the enforcement proceedings and provides that the individual is subject to all sanctions under law for falsifying evidence.

ARTICLE 2. NOTICE REQUIREMENTS

SECTION 2.01. Amends Chapter 5, Water Code, by adding a heading for Subchapter O, to read as follows:

New heading: SUBCHAPTER O. NOTICE REQUIREMENTS

SECTIONS 2.02-2.26. Transfers and sometimes amends portions of existing Chapters 5, 11, 26, 27, Water Code, and Chapters 361 and 382, Health and Safety Code, to Chapter 5, Water Code, to consolidate permit notice requirements in a new Subchapter O. Makes conforming and nonsubstantive changes and titles the new sections as follows:

Sec. 5.651. Redesignated from Section 5.115, Water Code. New heading: PERSONS AFFECTED IN COMMISSION HEARINGS; NOTICE OF APPLICATION FOR PERMIT OR LICENSE.

Sec. 5.652. Redesignated from Sections 11.085(f)-(i), Water Code. NOTICE OF APPLICATION FOR INTERBASIN TRANSFER.

Sec. 5.653. Redesignated from Sections 11.132(a)-(c), Water Code. NOTICE OF PROPOSED APPROPRIATION OF WATER. Requires the notice to be given to the persons who in the judgment of the commission are effected by an application for authorization to appropriate unappropriated state water under Chapter 11, including those persons listed in Section 5.654(b). Deletes text regarding the commission being required to hold a public hearing.

Sec. 5.654. Redesignated from Sections 11.132(d) and (e), Water Code. NOTICE REQUIRED TO OBTAIN AUTHORIZATION TO APPROPRIATE WATER WITHOUT HEARING. Requires the applicant, not later than 30 days before the date of action by the commission on an application for authorization to appropriate unappropriated state water under Chapter 11, to publish the commission's notice of the application under Section 5.653 at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located. Requires the commission, not later than 30 days before the date of action on the application by the commission, to mail a copy of the notice by first-class mail, postage prepaid, to certain persons and districts. Deletes text regarding the executive director.

Sec. 5.655. Redesignated from Sections 11.143(e) and (f), Water Code. NOTICE OF APPLICATION AND OF HEARING ON APPLICATION FOR PERMIT TO USE DOMESTIC AND LIVESTOCK RESERVOIR FOR OTHER PURPOSES. Requires the commission to give notice of an application for a permit to use water from a dam or reservoir exempted under Section 11.142 for a purpose other than domestic or livestock use as provided by this section.

Sec. 5.656. Redesignated from Section 11.143(d), Water Code. NOTICE REQUIRED TO OBTAIN A PERMIT WITHOUT HEARING TO USE DOMESTIC AND LIVESTOCK RESERVOIR FOR OTHER PURPOSES. Requires the applicant, not later than 30 days before the date of action by the commission on an application to obtain a permit under Section 11.143 to use water from a dam or reservoir exempted under Section 11.142 for a purpose other than domestic or livestock use, to publish the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located. Makes conforming changes.

Sec. 5.657. Redesignated from Section 11.175, Water Code. New heading: NOTICE OF CANCELLATION PROCEEDING. Requires the commission, at least 45 days before the date of a hearing on the proposed cancellation of a permit, certified filing, or certificate of adjudication under Section 11.176, to send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation in whole or in part.

Sec. 5.658. Redesignated from Sections 26.022(b) and (c), Water Code. NOTICE OF HEARINGS HELD UNDER CHAPTER 26. Requires notice of all hearings held under Chapter 26, except as otherwise provided by Sections 5.501, 5.504, 5.509, and 26.176, to be published at least once in certain newspapers.

Sec. 5.659. Redesignated from Sections 26.028(a), (b), and (e). NOTICE TO AFFECTED PERSONS OF APPLICATION FOR PERMIT, PERMIT AMENDMENT, OR PERMIT RENEWAL UNDER CHAPTER 26. Requires the commission to give notice of an application for a permit, permit amendment, or permit renewal under Chapter 26 to certain persons. Requires notice of an application under Section 26.028(c), rather than Subsection (d), to be mailed to certain persons within a certain timeframe. Deletes text regarding presenting information to the commissioner.

Sec. 5.660. Redesignated from Section 26.028(g). NOTICE REQUIRED TO OBTAIN PERMIT DECISION WITHOUT HEARING UNDER SECTION 26.028. Requires the applicant, not later than 30 days before the date of action by the commission on an application for a permit, permit amendment, or permit renewal under Chapter 26, to publish the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. Requires the applicant, not later than 30 days before the date of action on the application by the commission, to serve or mail the commission's notice of the application to persons who in the judgment of the commission are authorized to be affected, including the county judges as required by Section 5.659(b). Makes conforming changes.

Sec. 5.661. Redesignated from Section 26.040(b), Water Code. NOTICE OF PROPOSED GENERAL PERMIT TO DISCHARGE WASTE INTO OR ADJACENT TO STATE WATERS. Requires the commission to publish notice of a proposed general permit to discharge waste into or adjacent to waters in the state under Section 26.040 in a daily or weekly newspaper of general circulation in the area affected by the activity that is subject of the proposed general permit and in the Texas Register.

Sec. 5.662. Redesignated from Section 27.018(b), Water Code. NOTICE OF OPPORTUNITY FOR HEARING ON PERMIT APPLICATION FOR INJECTION WELL TO DISPOSE OF INDUSTRIAL AND MUNICIPAL WASTE. Requires the commission by rule to provide for giving notice of the opportunity to request a public hearing on a permit application for an injection well to dispose of industrial and municipal waste under Chapter 27.

Sec. 5.663. Redesignated from Section 361.063(c), Health and Safety Code. NOTICE OF

INTENT TO FILE APPLICATION FOR HAZARDOUS WASTE PERMIT. Requires the applicant, if an applicant for a permit for a hazardous waste management facility decides to participate in a local review committee process under Section 361.063, Health and Safety Code, to file with the commission a certain notice. Deletes text regarding the preapplication review process.

Sec. 5.664. Redesignated from Section 361.0665, Health and Safety Code. NOTICE OF INTENT TO OBTAIN MUNICIPAL SOLID WASTE PERMIT. Requires a person who applies for a municipal solid waste permit to publish notice of intent to obtain a permit under Chapter 361, Health and Safety Code, at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

Sec. 5.665. Redesignated from Sections 361.079(a) and (c), Health and Safety Code. NOTICE OF APPLICATION FOR SOLID WASTE OR HAZARDOUS INDUSTRIAL SOLID WASTE PERMIT. Deletes text regarding public hearing.

Sec. 5.666. Redesignated from Sections 361.0791(e), (f), and (g), Health and Safety Code. NOTICE OF REQUIRED PUBLIC MEETING ON APPLICATION FOR PERMIT FOR NEW HAZARDOUS WASTE MANAGEMENT FACILITY.

Sec. 5.667. Redesignated from Sections 361.081(a) and (b), Health and Safety Code. NOTICE OF HEARING ON APPLICATION FOR SOLID WASTE FACILITY.

Sec. 5.668. Redesignated from Section 361.082(c), Health and Safety Code. NOTICE OF PUBLIC HEARING ON APPLICATION FOR HAZARDOUS WASTE PERMIT.

Sec. 5.669. Redesignated from Sections 361.089(b) and (c). NOTICE REGARDING DENIAL OR AMENDMENT OF SOLID WASTE PERMIT. Requires the commission to notify each governmental entity listed under Section 361.067, Health and Safety Code, regarding possible commission action to deny or amend a solid waste permit under Section 361.089, Health and Safety Code. Deletes text regarding the commission providing an opportunity for a hearing. Makes conforming changes.

Sec. 5.670. Redesignated from Section 382.017(b), Health and Safety Code. NOTICE OF HEARING ON ADOPTION OF STATEWIDE RULE RELATING TO AIR POLLUTION. Provides that if a rule adopted under Section 382.017, Health and Safety Code, will have statewide effect, notice of the date, time, place, and purpose of the hearing is required to be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's judgment, give reasonable circulation throughout the state.

Sec. 5.671. Redesignated from Section 382.0516, Health and Safety Code. New heading: NOTICE TO STATE SENATOR AND REPRESENTATIVE OF RECEIPT OF PERMIT APPLICATION FOR A FACILITY THAT MAY EMIT AIR CONTAMINANTS. Requires the commission, on receiving an application under Chapter 382, Health and Safety Code, for a construction permit, a special permit, or an operating permit for a facility that may emit air contaminants, to send notice of the application to the state senator and representative who represent the area in which the facility is or will be located.

Sec. 5.672. Redesignated from Section 382.055(c), Health and Safety Code. NOTICE TO PERMIT HOLDER OF REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT. Requires the commission, not less than 180 days before the date on which an application for renewal of a preconstruction permit is due under Section 382.055, Health and Safety Code, to provide written notice to the permit holder, by registered or certified mail, that the permit is

scheduled for review in accordance with this section.

Sec. 5.673. Redesignated from Sections 382.056(a)-(c), (g), and (i), Health and Safety Code. NOTICE OF INTENT TO OBTAIN PRECONSTRUCTION PERMIT OR PERMIT REVIEW. Deletes text requiring the commission to consider the request for a public hearing.

Sec. 5.674. Redesignated from Section 382.0561(f), Health and Safety Code. NOTICE OF COMMENT PERIOD AND HEARING ON FEDERAL OPERATING PERMIT. Requires notice of the public comment period and opportunity for a hearing on an application for issuance, revision, reopening, or renewal of a federal operating permit under Section 382.0561, Health and Safety Code, to be published in accordance with Section 5.673.

Sec. 5.675. Redesignated from Section 382.0562, Health and Safety Code. New heading: NOTICE OF DECISION ON FEDERAL OPERATING PERMIT.

SECTION 2.27. Amends proposed new Chapter 50, Water Code, by adding Sections 5.676 and 5.677 as follows:

Sec. 5.676. NOTICE OF HEARING ON ISSUANCE OR RENEWAL OF LICENSE TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) Requires notice of a hearing on the issuance or renewal of a license to dispose of low-level radioactive waste under Section 401.114, Health and Safety Code, to be given as provided by this section and Section 401.114, Health and Safety Code.

(b) Requires the commission, in addition to other notice, to publish notice of the hearing in the manner provided by Chapter 313 (Notice for Local and Special Laws), Government Code, in the county in which the proposed facility is to be located. Requires the notice to state the subject and the time, place, and date of the hearing.

(c) Requires the commission to mail, by certified mail in the manner provided by the commission's rules, written notice to each person who owns property adjacent to the proposed site. Requires the notice to be mailed not later than the 31st day before the date of the hearing and include the same information that is in the published notice. Requires the commission or applicant, if true, to certify that the notice was mailed as required by this subsection, and at the hearing the certificate is conclusive evidence of the mailing.

Sec. 5.677. NOTICE OF AMENDMENT TO LICENSE TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. Requires the commission to publish notice of an amendment to a license to dispose of low-level radioactive waste under Section 401.116, Health and Safety Code, once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license. Requires the notice under this section to include certain information.

ARTICLE 3. FEES

SECTION 3.01. Amends Chapter 5, Water Code, by adding a heading for Subchapter P, as follows:

SUBCHAPTER P. FEES

SECTION 3.02. Transfers Section 5.235 (regarding fees), Water Code, to new Subchapter P (dealing exclusively with fees), Chapter 5, Water Code, and redesignates existing Section 5.235 as Section 5.701. No changes in text.

SECTION 3.03. Amends new Chapter 5P, Water Code, by adding Sections 5.702-5.707, as follows:

Sec. 5.702. PAYMENT OF FEES REQUIRED WHEN DUE. Requires payers to submit all fees on the date payment is due, whether billed or self-reported and self-paid. Prohibits a person required to pay a fee to the commission from disputing the assessment of or amount of a fee before the fee has been paid in full.

Sec. 5.703. FEE ADJUSTMENTS. Prohibits the commission from considering adjusting the amount of a fee due the commission under this code or the Health and Safety Code under certain conditions. Authorizes a person who pays an amount that exceeds the amount of the fee due because the commission incorrectly calculated the fee or the person made a duplicate payment to request a refund of the excess amount paid by a certain date. Requires a request for a refund or credit in an amount that exceeds \$5,000 to be forwarded for approval to the commission fee audit staff, together with an explanation of the grounds for the requested refund or credit. Provides that approval of a refund or credit does not prevent the fee audit staff from conducting a subsequent audit of the person for whom the refund or credit was approved.

Sec. 5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE. Requires the commission to promptly notify each person required to pay a commission fee under this code or the Health and Safety Code of any change in fee payment procedures.

Sec. 5.705. NOTICE OF VIOLATION. Authorizes the commission to issue a notice of violation to a person required to apply a commission fee under this code or the Health and Safety Code for knowingly violating reporting requirements or calculating the fee in an amount less than the amount actually due. Prohibits the executive director from modifying audit findings reported by a commission fee auditor.

Sec. 5.706. PENALTIES AND INTEREST ON DELINQUENT FEES. (a) Authorizes the commission, except as otherwise provided by law, to collect certain penalties for a delinquent fee due the commission under this code or the Health and Safety Code.

(b) Provides that unless otherwise required by law interest accrues, beginning on the 61st day after the date on which the fee was due, on the total amount of fee and penalties that have not been paid on or before the 61st day after the date on which the fee was due. Provides that the yearly interest rate is the rate of interest established for delinquent taxes under Section 111.060 (Interest on Delinquent Tax), Tax Code.

(c) Authorizes the executive director to modify a penalty or interest on a fee and penalties authorized by this section if the executive director provides a written explanation showing good cause for the modification.

(d) Requires penalties and interest collected by the commission under this section or under other law, unless that law otherwise provides, to be deposited to the credit of the fund or account to which the fee is required to be deposited.

Sec. 5.707. TRANSFERABILITY OF FUNDS DERIVED FROM FEES. Authorizes a percentage of fee revenue dedicated to one commission activity to be transferred to other commission activities as authorized in the General Appropriations Act.

ARTICLE 4. PERFORMANCE-BASED REGULATION

SECTION 4.01. Amends Chapter 5, Water Code, by adding new Subchapter Q, as follows:

SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. DEFINITIONS. Defines “flexible permitting,” “innovative regulatory program,” and “permit.”

Sec. 5.752. REGULATORY TIERS AND PERFORMANCE INCENTIVES. (a) Sets forth guidelines concerning the umbrella term “environmental regulations.”

(b) Requires the commission to develop a strategically directed regulatory structure based on incentives and compliance performance. Requires the commission by rule, to implement this structure, to establish regulatory tiers and performance incentives in which relative levels of compliance with environmental regulations are used to determine eligibility for participation in innovative regulatory programs.

(c) Sets forth requirements for the rules.

(d) Sets forth requirements for the rules.

(e) Requires the commission to determine a regulated entity’s compliance history, for certain purposes, according to the method developed under Section 5.754.

Sec. 5.753. COORDINATION OF INNOVATIVE REGULATORY PROGRAMS AND INCENTIVES. Requires the commission to designate a single point of contact within the agency to coordinate all innovative regulatory programs and incentives. Sets forth the duties of the designated coordinator.

Sec. 5.754. COMPONENTS OF AND STANDARDS FOR EVALUATING COMPLIANCE HISTORY. Requires the commission by rule to develop a single set of components of and standards for evaluating the compliance history of an applicant or permit holder and to consistently apply those components and standards in evaluating compliance history in all permitting and enforcement matters under the commission’s jurisdiction. Sets forth guidelines concerning the development of components and standards. Requires the commission to consider changes in ownership when tracking the compliance history of a regulated entity.

Sec. 5.755. REPORTS. Require the commission to collect certain types of data. Requires the commission to annually prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission. Requires the commission to include in the annual enforcement report required by Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997, the comparative analysis required by this section, organized by region and by regulated medium.

Sec. 5.756. PERFORMANCE ASSESSMENT FOR PROGRAM ELIGIBILITY. Requires the commission by rule to develop a certain method of performance assessment. Requires the commission to use this method in conjunction with the regulatory structure developed under Section 5.752 to determine eligibility for certain programs. Requires the commission by rule to establish methods of assessing the performance of certain regulated entities and sets forth suggested guidelines for those methods. Requires the commission rules to provide that a regulated person with a compliance history that is unacceptable under this section and Section 5.752 is not eligible to participate in innovate regulatory programs or incentives.

Sec. 5.757. PERFORMANCE ASSESSMENT FOR PERMITTING AND ENFORCEMENT DECISIONS. Requires the commission by rule to develop guidelines for the use of compliance history in certain commission decisions.

Sec. 5.758. ANNOUNCED INSPECTIONS. Prohibits the commission from announcing certain inspections except under certain conditions. Requires the commission to track whether inspections are announced or unannounced and include the information in the report required by

Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997.

Sec. 5.759. **ELIGIBILITY FOR FLEXIBLE PERMITTING.** Provides that a regulated entity is not eligible for flexible permitting except under certain conditions.

SECTION 4.02. Transfers and amends Section 5.123, Water Code, as added by Chapter 1203, Acts of the 75th Legislature, Regular Session, 1997, to new Chapter 5Q, Water Code, and redesignates existing Section 5.123 as new Section 5.760, as follows:

Sec. 5.760. Authorizes the commission by order to exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution under certain conditions. Prohibits the commission from exempting an applicant under this section unless the applicant can present to the commission documented evidence of benefits to environmental quality that will result from the project the applicant proposes.

SECTION 4.03. Amends Section 7.067(a), Water Code, to prohibit the commission from approving certain projects.

SECTION 4.04. Amends Section 361.0215, Health and Safety Code, as follows:

Sec. 361.0215. New heading: **POLLUTION PREVENTION ADVISORY COMMITTEE.** Replaces the term “waste reduction” with “pollution prevention.” Require the pollution prevention advisory committee to advise the commission on the creation and implementation of an incentive-and performance-based structure for the regulation of air and water quality and solid waste management as set out in Section 5.752, Water Code. Requires the committee to report quarterly to the commission on certain activities.

SECTION 4.05. Amends Section 361.088, Health and Safety Code, by adding Subsection (g) to require the commission to review a permit issued under this chapter every five to seven years to assess the license holder’s compliance history.

SECTION 4.06. Amends Chapter 382B, Health and Safety Code, by adding Sections 382.0215 and 382.0216, as follows:

Sec. 382.0215. **ASSESSMENT OF EMISSIONS DUE TO ACCIDENTS, UPSETS, OR MAINTENANCE.** Defines “emissions event.” Require the commission to centrally track all emissions events and collect certain information. Requires the commission to annually assess such information and include the assessment in a certain required report.

Sec. 382.0216. **REGULATION OF EMISSIONS EVENTS.** Requires the commission to evaluate certain persons regulated under this section and by rule to limit the number of emissions events that may be exempted from enforcement action. Requires the rules to perform certain functions. Requires the commission, in adopting rules under this section, to consider certain factors. Authorizes the commission to enforce rules adopted under this section by emergency order under Chapter 5L, Water Code, and authorizes the commission to take or order the owner or operator of the regulated facility that is the source of the emissions event to take any necessary corrective action.

ARTICLE 5. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

SECTION 5.01. Transfers and amends Chapter 421, Health and Safety Code, as added by Chapter 447, Acts of the 76th Legislature, Regular Session, 1999, and redesignates Chapter 421 as Subchapter R, as follows:

SUBCHAPTER R. ACCREDITATION OF
ENVIRONMENTAL TESTING LABORATORIES

Sec. 5.801. Redesignated from Section 421.001, Health and Safety Code. Deletes text defining “board” and “department.” Redefines “environmental testing laboratory.”

Sec. 5.802. Redesignated from Section 421.002, Health and Safety Code. New heading: ADMINISTRATION BY COMMISSION. Requires the commission (rather than the Texas Department of Health, or department) to adopt rules for the administration of the voluntary environmental testing laboratory accreditation program established by this chapter. Requires the program to be consistent with national accreditation standards approved by the National Environmental Laboratory Accreditation Conference.

Sec. 5.803. Redesignated from Section 421.003, Health and Safety Code. Makes conforming changes. Requires the commission (rather than the Texas Board of Health, or board) by rule to establish a schedule of reasonable accreditation fees designed for certain purposes.

Sec. 5.804. Redesignated from Section 421.004. Makes conforming changes. Requires the commission by rule to provide for the accreditation of an environmental testing laboratory that is accredited or licensed in another state by an authority that is approved by the National Environmental Laboratory Accreditation Conference.

Sec. 5.805. Redesignated from Section 421.005. Requires the commission, rather than the board, to adopt rules to implement this subchapter.

Sec. 5.806. Redesignated from Section 421.006. Makes conforming changes.

Sec. 5.807. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION ACCOUNT. Requires all fees collected under this subchapter to be deposited to the credit of the environmental testing laboratory accreditation account and authorizes such fees to be appropriated to the commission only for paying the costs of the accreditation program. Provides that any balance in the account in excess of \$1,000 at the end of a fiscal year reverts to the general revenue fund.

ARTICLE 6. CERTIFICATION OF WATER TREATMENT SPECIALISTS

SECTION 6.01. Transfers and amends Section 3A, The Plumbing License Law (Article 6243-101, V.T.C.S.), to Chapter 341, Health and Safety Code, and redesignates it as Subchapter G, Chapter 341, Health and Safety Code, as follows:

SUBCHAPTER G. CERTIFICATION OF WATER TREATMENT SPECIALISTS

Sec. 341.101. DEFINITIONS. Defines “commission,” “installation of water treatment appliances,” “water treatment,” and “water treatment equipment.”

Sec. 341.102. WATER TREATMENT SPECIALIST CERTIFICATION PROGRAM. Requires the commission (rather than the Commissioner of Health or his designee) by rule to establish a program to certify persons qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment equipment and appliances. Requires the rules to establish certain factors.

Sec. 341.103. CERTIFICATION REQUIRED. Prohibits a person from engaging in water treatment except under certain conditions.

Sec. 341.104. APPLICATION FOR CERTIFICATION. Requires a person desiring to obtain certification under the program established under this subchapter to file certain applications and fees with the commission.

Sec. 341.105. ISSUANCE OF CERTIFICATE. Deletes text prohibiting this section from being construed to require that persons licensed pursuant to this Act are subject to certification. Deletes text regarding the applicant or holder of a certificate paying a fee. Requires the commission, on receipt of an application that meets commission requirements and the required fee, to issue the certificate. Makes conforming changes. Deletes text requiring the board to adopt rules.

ARTICLE 7. REGISTRATION OF IRRIGATORS AND ON-SITE SEWAGE DISPOSAL SYSTEM INSTALLERS

SECTION 7.01. Amends Section 34.008(a), Water Code, to authorize the commission to waive any prerequisite for obtaining registration for an applicant who is registered as a licensed irrigator or a licensed installer by another jurisdiction with which this state has a reciprocity agreement. Authorizes the commission to make an agreement, subject to the approval of the governor, with another state to allow for registration by reciprocity. Deletes text regarding certifying applicants registered in other states or countries.

SECTION 7.02. Amends Section 34.009(f), Water Code, to require the commission, for the year in which the expiration date is changed, to prorate registration fees on a monthly basis so that each registrant pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid.

SECTION 7.03. Amends Section 366.076, Health and Safety Code, to authorize the commission by rule to adopt a system under which registrations expire on various dates during the year. Sets forth guidelines regarding prorating registration fees. Provides that, on renewal of the registration on the new expiration date, the total registration renewal fee is payable.

ARTICLE 8. CONFORMING AMENDMENTS.

SECTION 8.01. Amends Section 5.174(a), Water Code, to make a conforming change.

SECTION 8.02. Amends Section 11.085, Water Code, as it exists after the transfer and redesignation of Subsections (f)-(i) of this Act, by adding Subsection (d) and relettering Subsections (j)-(v) as Subsections (f)-(r), as follows:

(d) Makes a conforming change.

Redesignates Subsections (j)-(v) as Subsections (f)-(r).

SECTION 8.03. Amends Section 11.132, Water Code, as it exists after the transfer and redesignations of Subsections (a)-(c) by this Act, by adding new Subsections (a) and (b), relettering existing Subsection (f) as Subsection (c), and amending existing Subsection (f), as follows:

(a) Requires notice to be given of an application for authorization to appropriate unappropriated state water as prescribed by Section 5.653. Requires the commission, on the motion of a commissioner or on the request of the executive director or any affected person, to hold a public hearing on the application.

(b) Authorizes the commission to act on the application without holding a public hearing under certain conditions.

(c) Redesignated from existing Subsection (f). Makes a conforming change.

SECTION 8.04. Amends Section 11.139(g), Water Code, to make a conforming change.

SECTION 8.05. Amends Section 11.143, Water Code, as it exists after the transfer and redesignation of Subsections (d)-(f) by this Act, by adding a new Subsection (d), relettering existing Subsections (g)-(i) as Subsections (e)-(g), and amending existing Subsection (g), as follows:

(d) Requires the commission, except as otherwise specifically provided by this subsection, before it can approve an application and issue a permit to use water from a dam or reservoir exempted under Section 11.142 for a purpose other than domestic or livestock use, to give notice as prescribed by Section 5.655 and hold a hearing as prescribed by this section. Authorizes the commission to act on the application without a public hearing under certain conditions.

(g) Makes a conforming change.

Redesignates Subsections (g)-(i) as Subsections (e)-(g).

SECTION 8.06. Amends Section 11.323(a), Water Code, to make a conforming change.

SECTION 8.07. Amends Section 26.022, Water Code, as it exists after the transfer and predesignation of Subsections (b) and (c) by this Act, by amending Subsection (a), relettering existing Subsections (d) and (e) as Subsections (b) and (c), and amending existing Subsections (d) and (e), as follows:

(a) Makes a conforming change.

(b) Redesignated from existing Subsection (d). Makes a conforming change.

(c) Redesignated from existing Subsection (e). Makes a conforming change.

SECTION 8.08. Amends Section 26.028, Water Code, as it exists after the transfer and redesignation of Subsections (a), (b), (e), and (g) by this Act, by adding a new Subsection (a), relettering existing Subsections (c) and (d) as Subsections (b) and (c), adding a new Subsection (d), relettering existing Subsection (f) as Subsection (e), and adding a new Subsection (f), as follows:

(a) Requires notice of an application for and a hearing on an application for a permit, permit amendment, or permit renewal to be given as required by Section 5.659.

(c) Authorizes the commission to approve an application to renew or amend a permit at a regular meeting without the necessity of holding a public hearing under certain conditions.

(d) Requires notice of an application under Subsection (c) to be given as provided by Section 5.659(c) and authorizes the persons notified under that section to present information to the commission on the application.

(f) Authorizes the commission, for the purposes of Subsection (a), to act on an application without holding a public hearing under certain conditions.

SECTION 8.09. Amends Section 26.0281, Water Code, as follows:

Sec. 26.0281. New heading: **CONSIDERATION OF COMPLIANCE HISTORY.**

Requires the commission, in considering the issuance, amendment, or renewal of a permit to

discharge effluent comprised primarily of sewage or municipal waste, to consider the compliance history of the applicant and its operator under the method for evaluating compliance history developed by the commission under Section 5.754. Deletes text regarding laws of this state and terms of permits or orders issued by the commission.

SECTION 8.10. Amends Section 26.040, Water Code, as it exists after the transfer and redesignation of Subsection (b) by this act, by relettering Subsections (c)-(m) as Subsections (b)-(l) and amending existing Subsections (h) and (i), as follows:

(g) Redesignated from existing Subsection (h). Requires the commission, after hearing, to deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger's compliance history is unacceptable under a certain method of evaluating compliance history. Deletes text regarding violations.

(h) Redesignated from existing Subsection (i). Makes conforming changes.

SECTION 8.11. Amends Section 27.018, Water Code, as it exists after the transfer and redesignation of Subsection (b) by this act, by adding a new Subsection (b) and amending Subsection (c), as follows:

(b) Requires notice of the opportunity to request public hearing on a permit application to be given as provided by Section 5.662.

(c) Makes a conforming change.

SECTION 8.12. Amends Sections 27.051(d) and (e), Water Code, as follows:

(d) Requires the commission, in determining if the use or installation of an injection well for the disposal of hazardous waste is in the public interest under Subsection (a)(1), to consider, but not be limited to the consideration of, certain factors.

(e) Requires the commission to establish a procedure by rule for its preparation of compliance summaries relating to the compliance history of the applicant in accordance with the method for evaluating compliance history developed by the commission under Section 5.754. Deletes text regarding the rules adopted or orders or permits issued by the commission.

SECTION 8.13. Amends Section 361.020(d), Health and Safety Code, as follows to require the commission in developing a comprehensive statewide strategic plan to consult with certain entities.

SECTION 8.14. Amends Section 361.063, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (c) by this Act, by adding a new Subsection (c) to provide that filing notice with the commission as required by Section 5.663, Water Code, initiates the preapplication review process.

SECTION 8.15. Amends the heading to Section 361.079, Health and Safety Code, to read as follows:

Sec. 361.079. HEARING PROCEDURES.

SECTION 8.16. Amends Section 361.079, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (a) and (c) by this Act, by adding a new Subsection (a) to provide that notice for a hearing under Section 361.080 or 361.081 is given as provided by Section 5.665, Water Code. Requires the commission by rule to establish procedures for a public hearing under Section 361.080 or 361.081.

SECTION 8.17. Amends Section 361.0791, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (e), (f), and (g), by this Act, by adding a new Subsection (e) to require notice of a meeting, if a meeting is required under Subsection (a), to be given as provided by Section 5.666, Water Code.

SECTION 8.18. Amends Section 361.080(b), Health and Safety Code, to make a conforming change.

SECTION 8.19. Amends Section 361.081, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (a) and (b) by this Act, by amending the heading, adding a new Subsection (a), and relettering and amending Subsection (c), as follows:

Sec. 361.081. New heading: HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY. (a) Requires the commission to require the applicant to provide notice of the hearing as provided by Section 5.667, Water Code.

(b) Redesignated from existing Subsection (c). Makes a conforming change.

SECTION 8.20. Amends Section 361.082, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (c) by this Act, by adding a new Subsection (c) and amending Subsection (d), as follows:

(c) Requires the commission by rule to establish procedures for a public hearing on an application for a permit under this section. Requires notice of the hearing to be given as provided by Section 5.668, Water Code.

(d) Makes a conforming change.

SECTION 8.21. Amends Sections 361.084(a) and (c), Health and Safety Code, as follows:

(a) Requires the commission by rule to establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code.

(c) Authorizes evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state during the period adopted under Section 5.754, Water Code, for the consideration of compliance history concerning solid waste management to be used for certain purposes.

SECTION 8.22. Amends Sections 361.088(d) and (f), Health and Safety Code, to make conforming changes.

SECTION 8.23. Amends Section 361.089, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (b) and (c) by this Act, by adding new Subsections (b) and (c) and amending Subsections (a), (e), and (f), as follows:

(a) Authorizes the commission, for good cause, to deny or amend a permit it issues or has authority to issue for certain reasons. Deletes text regarding violations.

(b) Requires the commission provide notice under Section 5.669, Water Code, and an opportunity for a hearing to the permit holder or applicant and persons affected. Authorizes the commission to hold a hearing on its own motion.

(c) Requires the commission by rule to establish procedures for any public hearing under this section.

(e) Authorizes the commission to deny an original or renewal permit under certain conditions.

(f) Requires the commission, before denying a permit under this section, to find certain required information.

SECTION 8.24. Amends Section 382.017, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (b) by this Act, by adding a new Subsection (b) to require notice of a public hearing on a proposed rule under this section to be given as provided by Section 5.670, Water Code.

SECTION 8.25. Amends Section 382.0518(c), Health and Safety Code, to authorize the commission, in considering the issuance, amendment, or renewal of a permit, to consider the applicant's compliance history, in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code, during the period established by the commission under Section 5.754, Water Code, for the consideration of compliance history. Deletes text regarding previous adjudicated decisions or compliance proceedings.

SECTION 8.26. Amends Section 382.05191(a), Health and Safety Code, to make a conforming change.

SECTION 8.27. Amends Section 382.055, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (c) by this Act, by adding a new Subsection (c) and amending Subsection (d), as follows:

(c) Requires the commission to provide notice to the permit holder, as provided by Section 5.672, Water Code, that the permit is scheduled for review.

(d) Requires the commission to consider certain factors in determining whether and under which conditions a preconstruction permit should be renewed.

SECTION 8.28. Amends Section 382.056, Health and Safety Code, as it exists after the transfer and redesignation of Subsections (a)-(c), (g), and (i) by this Act, by adding a new Subsection (a), relettering Subsections (d)-(f) as Subsections (b)-(d), adding a new Subsection (e), relettering Subsections (h) and (j)-(p) as Subsections (f)-(m), and amending existing Subsection (h), as follows:

(a) Requires an applicant for a permit under Section 382.0518 or a permit renewal review under Section 382.055 to publish notice of intent to obtain the permit or permit review as provided by Section 5.673, Water Code.

(e) Requires the applicant, if, in response to the notice published under Subsection (a) for a permit under Section 382.0518 or a permit renewal review under Section 382.055, a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, to publish notice of the preliminary decision as provided by Section 5.673(d), Water Code. Requires the commission to seek public comment on the preliminary decision. Requires the commission to consider the request for public hearing under the procedures provided by Section 5.673(e), Water Code, and Subsections (g)-(k). Prohibits the commission from seeking further public comment or holding a public hearing under the procedures provided by Section 5.673(e), Water Code, and Subsections (g)-(k) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously

emitted.

(f) Makes conforming changes.

(l), Authorizes the commission, notwithstanding other provisions of this chapter, to hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is unacceptable under the method of evaluating compliance history developed by the commission under Section 5.754, Water Code, during the period established by the commission under that section for consideration of compliance history.

SECTION 8.29. Amends Section 382.0561, Health and Safety Code, as it exists after the transfer and redesignation of Subsection (f) by this Act, by adding a new Subsection (f) to require notice of the public comment period and opportunity for a hearing under this section to be published in accordance with Section 5.674, Water Code.

SECTION 8.30. Reenacts and amends Section 382.058, Health and Safety Code, as amended by Chapters 391 and 406, Acts of the 76th Legislature, Regular Session, 1999, as follows:

Sec. 382.058. New heading: NOTICE OF AND HEARING ON CONSTRUCTION OF CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION. Makes conforming changes.

SECTION 8.31. Amends Section 401.110, Health and Safety Code, to make a conforming change regarding compliance history.

SECTION 8.32. Amends Section 401.112(a), Health and Safety Code, to require the department or commission, within its jurisdiction, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, to consider certain factors.

SECTION 8.33. Amends Section 401.114, Health and Safety Code, to require the department (rather than the agency), before the department, within its jurisdiction, grants or renews a license to process low-level radioactive waste from other persons, to give notice and provide an opportunity for a public hearing in the manner provided by the department's formal hearing procedure and Chapter 2001 (Administrative Procedure), Government Code. Requires the commission, before the commission, within its jurisdiction, grants or renews a license to dispose of low-level radioactive waste from other persons, to give notice and provide an opportunity for a public hearing in the manner provided by Section 5.676, Water Code, the commission's formal hearing procedure, and Chapter 2001, Government Code. Makes conforming changes.

SECTION 8.34. Amends Section 401.116, Health and Safety Code, by amending Subsection (b), adding a new Subsection (c), relettering existing Subsections (c) and (d) as Subsections (d) and (e), and amending existing Subsection (d) as follows:

(b) Requires the department to publish notice of an amendment to a license to process low-level radioactive waste.

(c) Requires the commission to publish notice of an amendment to a license to dispose of low-level radioactive waste as provided by Section 5.677, Water Code.

(d) Makes a conforming change.

(e) Redesignated from existing Subsection (d). Makes conforming changes.

ARTICLE 9. TRANSITIONS; EFFECTIVE DATE.

SECTION 9.01. TRANSFER OF SAFE DRINKING WATER LABORATORY

CERTIFICATION PROGRAM. (a) Provides that, on the effective date of this Act, all powers, duties, rights, and obligations of the Texas Department of Health relating to the safe drinking water laboratory certification program administered by the Texas Department of Health's bureau of laboratories; all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the safe drinking water laboratory certification program; all appropriations to the Texas Department of Health pertaining to the safe drinking water laboratory certification program; and all other state or federal money available to the Texas Department of Health for that program are transferred to the Texas Natural Resource Conservation Commission.

(b) Provides that, on the effective date of this Act, Texas Department of Health rules relating to the safe drinking water laboratory certification program administered by the Texas Department of Health's bureau of laboratories are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

(c) Provides that a certification issued by the Texas Department of Health for a safe drinking water laboratory before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section.

SECTION 9.02. TRANSFER OF ENVIRONMENTAL TESTING LABORATORY

CERTIFICATION PROGRAM. (a) Provides that, on the effective date of this Act, all powers, duties, rights, and obligations of the Texas Department of Health relating to the environmental testing laboratory certification program administered by the Texas Department of Health under Chapter 421, Health and Safety Code; all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the environmental testing laboratory certification program; all appropriations to the Texas Department of Health pertaining to the environmental laboratory certification program; and all other state or federal money available to the Texas Department of Health for that program are transferred to the Texas Natural Resource Conservation Commission.

(b) Provides that, on the effective date of this Act, Texas Department of Health rules relating to the environmental testing laboratory certification program administered by the Texas Department of Health under Chapter 421, Health and Safety Code, are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

(c) Provides that a certification issued by the Texas Department of Health before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section and by this Act to Chapter 421, Health and Safety Code.

(d) Provides that the change in law made by the addition by this Act of Section 5.127, Water Code, relating to the acceptance of environmental testing laboratory results by the Texas Natural Resource Conservation Commission, applies only to environmental testing laboratory results submitted to the commission on or after the third anniversary of the date on which the commission publishes notice in the Texas Register that the commission's environmental laboratory testing program established under Chapter 5R, Water Code, as added by this Act, has met the standards of the National Environmental Laboratory Accreditation Conference.

SECTION 9.03. CERTIFICATION OF WATER TREATMENT SPECIALISTS. (a) Provides that, on the effective date of this Act, all powers, duties, rights, and obligations of the Texas Department of Health relating to the certification of water treatment specialists administered by the Texas Department of Health under Section 3A, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes); all equipment, data, documents, facilities, and other items of the Texas

Department of Health relating to the certification of water treatment specialists; all appropriations to the Texas Department of Health pertaining to the certification of water treatment specialists; and all other state or federal money available to the Texas Department of Health for that program are transferred to the Texas Natural Resource Conservation Commission.

(b) Provides that, on the effective date of this Act, Texas Department of Health rules relating to the certification of water treatment specialists are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

SECTION 9.04. PERFORMANCE-BASED REGULATION. (a) Requires the commission, not later than March 1, 2002, by rule to establish the components of and standards for evaluating compliance history, as required by Section 5.754, Water Code, as added by this Act.

(b) Requires the commission, not later than September 1, 2002, to begin tracking compliance for use in establishing the regulatory structure authorized by Chapter 5Q, Water Code, as added by this Act.

(c) Requires the commission, as soon as practicable, but not later than September 1, 2005, to adopt rules governing and to implement the tiered regulatory structure required by Section 5.752, Water Code, as added by this Act. Requires commission to adopt the rules and implement the tiered regulatory structure in stages over the three-year period.

(d) Provides that the changes made by this Act in the consideration of compliance history in decisions by the commission relating to the issuance, amendment, modification, or renewal of permits under certain stated sections apply only to an application for the issuance, amendment, modification, or renewal of a permit submitted to the commission on or after March 1, 2002.

(e) Provides that the changes made by this Act in the consideration of compliance history in decisions by the commission relating to inspections and flexible permitting under Sections 5.758 and 5.759, Water Code, apply, effective March 1, 2002, to a person who holds a permit issued by the commission that is subject to those sections.

(f) Provides that the changes made by this Act in the consideration of compliance history in decisions of the commission relating to the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission applies only to a proceeding that is initiated or an action that is brought on or after March 1, 2002.

(g) Authorizes the commission by rule, for the period between March 1, 2002, and September 1, 2005, to temporarily modify specific compliance history requirements to implement the regulatory structure being developed under Chapter 5Q, Water Code. Provides that this section does not authorize the commission to modify existing statutory requirements relating to the use of compliance history in any enforcement proceeding.

SECTION 9.05. FEES. Provides that the changes in law made by Sections 5.702 and 5.703, Water Code, as added by this Act, relating to the timely payment and adjustment of fees due the commission, and by Section 5.706, Water Code, as added by this Act, relating to penalties and interest for delinquent fees, apply only to fees that are due on or after September 1, 2001.

SECTION 9.06. REGULATORY FLEXIBILITY. Provides that the change in law made by Section 5.123, Water Code, as added by Chapter 1203, Acts of the 75th Legislature, Regular Session, 1997, relating to regulatory flexibility, as transferred, redesignated, and amended by this Act, applies only to

an application for regulatory flexibility that is submitted to the commission on or after September 1, 2001.

SECTION 9.07. COMMISSIONER TRAINING. Requires the commission, as soon as practicable after September 1, 2001, but not later than December 1, 2001, to adopt rules to implement the training program for commission members required by Section 5.0535, Water Code, as added by this Act. Provides that the training requirements of Section 5.0535, Water Code, as added by this Act, apply only to a member of the commission who is appointed on or after January 1, 2002.

SECTION 9.08. EXECUTIVE DIRECTOR. Provides that the change in law made by this Act to Section 5.228, Water Code, relating to hearing appearances by the executive director of the commission, applies only to a hearing in which the executive director is named a party on or after September 1, 2001.

SECTION 9.09. INITIATION OF ACTION ON CITIZEN EVIDENCE. (a) Requires the commission, not later than December 1, 2001, to adopt rules to implement the requirements of Section 7.0025, Water Code, as added by this Act, relating to the initiation of enforcement action by the commission based on evidence of an environmental problem submitted by a private individual. Provides that the change in law made by Section 7.0025, Water Code, as added by this Act, applies only to evidence of an environmental problem submitted to the commission on or after January 1, 2002.

SECTION 9.10. EFFECTIVE DATE. Provides that, except as otherwise provided by this Act, this Act takes effect September 1, 2001.