

BILL ANALYSIS

Senate Research Center

S.B. 1800
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current statute authorizes the Texas Commission on Environmental Quality (TCEQ) to enter into legally binding agreements with air quality permit applicants under certain permit conditions. However the statute authorizing such agreements lacks directives regarding the conditions or agreements. As a result debate over certain proposed coal-fired electric generation facilities has demonstrated that the interests of a profit-driven electric generation company may not be aligned with the state's interest in protecting air quality and finite natural resources.

As proposed, S.B. 1800 authorizes TCEQ to hold certain permit applicants accountable for promises the applicant makes to the commission, the legislature, and the public by converting these assurances into legally binding conditions of a permit. This bill prohibits emissions reductions or improvements in air quality in conjunction with a pending permit application from being eligible for sale as credits in the cap and trade market. This bill requires TCEQ to consider the impact of expected emissions for air quality applicants.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality (TCEQ), as the successor agency to TNRCC.]

SECTION 1. Amends Section 382.0518, Health and Safety Code, by adding Subsection (b-1), as follows:

(b-1) Provides that this subsection applies only to an application for a permit for a proposed coal-fired or lignite-fired electric generating facility that is or was subject to an order to expedite the permit hearings process that is applicable to applications for more than one such facility by the same applicant. Requires the Texas Natural Resource Conservation Commission (TNRCC) to consider certain factors in making its finding under Subsection (b)(2) as to whether emissions from the facility will contravene the intent of this chapter.

SECTION 2. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.067, as follows:

Sec. 382.067. PERMIT CONDITIONS FOR ELECTRIC GENERATING FACILITIES.

(a) Authorizes TNRCC to consider as an appropriate permit condition for a permit to be issued under this chapter for a coal-fired or lignite-fired electric generating facility any representation made to the public, TNRCC, or a hearings officer regarding emissions reductions from the proposed facility or other facilities, or improvements in ambient air quality.

(b) Requires TNRCC, in evaluating representations described by Subsection (a), to assess any emissions associated with the transportation of the fuel proposed for the facility.

(c) Requires TNRCC as a permit condition, if the representations regarding reducing emissions involve emissions reductions that may be eligible for an emissions credits trading program, to prohibit the owner or operator of the facility from earning or trading credits earned for the emissions reductions or impose reasonable conditions regarding the earning and trading of such credits, including a condition that ensures that related emissions reductions occur inside this state.

(d) Requires TNRCC to include in the permit reporting and monitoring requirements as necessary to enforce the condition if the permit is issued with the agreed reductions as a permit condition.

(e) Requires TNRCC to consider a failure of a permit holder to achieve an emissions reduction on which the permit is conditioned to be a violation of the permit and to initiate an appropriate enforcement action.

(f) Authorizes TNRCC to offer to enter corresponding conditions into the permit and require the applicant to respond to the offer if TNRCC notes that an applicant for a permit under this subchapter publicly represents that the applicant will reduce emissions from other sources owned or operated by the applicant in this state, in addition to the authority provided under Subsection (a).

SECTION 3. Requires the Texas Commission on Environmental Quality, as soon as is practicable, to adopt rules to implement Section 382.0518(b-1) and Section 382.067, Health and Safety Code, as added by this Act. Requires the rules to be adopted not later than December 1, 2007.

SECTION 4. Effective date: upon passage or September 1, 2007.