

CHAPTER 637

S.B. No. 725

An Act relating to the membership, terms, administration, powers and duties, and continuation of the Texas Air Control Board, to the authority of the board to set fees and impose administrative penalties, to the creation of the Texas Clean Air Study Committee, and to the authorization for

additional motor vehicle emissions inspections, fees, and maintenance programs; providing for notice by applicants and opportunity for hearings; providing enforcement procedures and penalties; amending the Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes), by amending Sections 1.02, 2.01a, 2.02, 2.06, 2.15, 2.16, and 3.07, Subsection (c) of Section 3.09, Subsection (e) of Section 3.10, Subsections (a) and (b) of Section 3.14, Subsections (a) and (b) of Section 3.16, Subsection (e) of Section 3.28, Sections 3.20, 3.27, 3.29, 4.01, and 4.02; by adding Sections 2.021, 2.022, 2.023, 2.041, 2.091-2.094, 2.18-2.22, 3.101, and 3.271, Subsections (g) and (h) to Section 3.28, Sections 3.31, 4.041, and 4.042, and Subchapter G; and by repealing Sections 2.10 and 3.21-3.26 and Subsections (a), (b), (c), and (f) of Section 3.30; amending Subsections (d) and (g) of Section 142, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 1.02 and 2.01a, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1.02. **POLICY AND PURPOSE.** It is the policy of this state and the purpose of this Act to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of health, general welfare, and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility. *It is intended the provisions of the Act should be vigorously enforced and that violations of the Act or any rule or order of the Texas Air Control Board should result in expeditious initiation of enforcement actions as provided in this Act.*"

"Section 2.01a. **APPLICATION OF SUNSET ACT.** The Texas Air Control Board is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991 [~~1985~~].

"The policy structure and enforcement activities of the board shall be reviewed under the provisions of the Texas Sunset Act prior to January 1, 1987."

SECTION 2. Section 2.02, Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2.02. **MEMBERS OF THE BOARD.** (a) The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Of the nine members appointed by the governor, one shall be a professional engineer with at least ten years experience in the actual practice of his profession which experience shall include work in air control; one shall be a physician licensed to practice in this state, currently engaged in general practice in this state, with experience in the field of industrial medicine; one shall be a person who has been actively engaged in the management of a private manufacturing or industrial concern for at least ten years immediately prior to his appointment; one shall be an agricultural engineer with at least ten years experience in his profession; and five members must be members of the general public of whom at least one must be a member with a demonstrated involvement in efforts to safeguard the environment.

"(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

"(2) owns, controls, or has, directly or indirectly, more than a ten percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

"(3) uses or receives a substantial amount of tangible goods, services, or funds from the board [shall be chosen to represent the public interest]."

SECTION 3. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.021 to read as follows:

*"Section 2.021. **APPOINTMENTS WITHOUT DISCRIMINATION.** Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees."*

SECTION 4. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.022 to read as follows:

*"Section 2.022. **DISQUALIFICATION OF LOBBYISTS.** A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board."*

SECTION 5. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.023 to read as follows:

"Section 2.023. CONFLICTS OF INTEREST. An officer, employee, or paid consultant of a trade association for an industry regulated by the board may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association for an industry regulated by the board be a member of the board or an employee of the board Grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act."

SECTION 6. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.041 to read as follows:

"Section 2.041. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

"(1) does not have at the time of appointment the qualifications required by Section 2.02 of this Act for appointment to the board;

"(2) does not maintain during the service on the board the qualifications required by Section 2.02 of this Act for appointment to the board;

"(3) violates a prohibition established by Section 2.022 or 2.023 of this Act;

"(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

"(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

"(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

"(c) If the executive director has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of such ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.

"(d) The board shall maintain public records sufficient to show continuing eligibility under provisions of this Act."

SECTION 7. Section 2.06, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2.06. BOARD OFFICERS. (a) The governor shall designate a chairman of the board from among the members of the board. A member holds the position of chairman at the pleasure of the governor.

"(b) The board shall elect a [chairman and a] vice-chairman to serve a year term [terms] beginning on February 1 of each odd-numbered year."

SECTION 8. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.091 to read as follows:

"Section 2.091. CAREER LADDER PROGRAM. The executive director or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting."

SECTION 9. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.092 to read as follows:

"Section 2.092. PERFORMANCE EVALUATION SYSTEM. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this section."

SECTION 10. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.093 to read as follows:

"Section 2.093. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:

"(1) personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

"(2) a comprehensive analysis of the agency's work force that meets federal and state guidelines;

"(3) procedures by which a determination can be made of significant underutilization in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

“(4) reasonable methods to appropriately address areas of significant underutilization in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance.

“(b) The policy statements shall be filed with the governor’s office within 60 days of the effective date of this Act, cover an annual period, and be updated at least annually. The governor’s office shall develop a biennial report to the legislature based on the information submitted. Such report may be made separately or as a part of other biennial reports made to the legislature.”

SECTION 11. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Section 2.094 to read as follows:

“Section 2.094. EMPLOYEE QUALIFICATIONS; STANDARDS OF CONDUCT. The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.”

SECTION 12. Section 2.15, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 2.15. [BIENNIAL] REPORTS. (a) The board shall make biennial written reports to the governor and to the Legislature and shall include in each report a statement of its activities.

“(b) The board shall file annually with the governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.”

SECTION 13. Section 2.16, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 2.16. FEES. Except as specifically authorized in this Act, no fees may be charged by the executive director [secretary] or the board for the performance of any of their duties and functions under this Act.”

SECTION 14. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Section 2.18 to read as follows:

“Section 2.18. AUDIT. The State Auditor shall audit the financial transactions of the board at least once during each biennium.”

SECTION 15. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Section 2.19 to read as follows:

“Section 2.19. PUBLIC INFORMATION. The board shall prepare information of public interest describing the functions of the board and describing the board’s procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.”

SECTION 16. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Section 2.20 to read as follows:

“Section 2.20. COMPLAINT FILE. The board shall keep an information file about each complaint filed with the board relating to a licensee or entity regulated by the board.”

SECTION 17. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Section 2.21 to read as follows:

“Section 2.21. NOTIFICATION CONCERNING COMPLAINT. If a written complaint is filed with the board relating to a licensee or entity regulated by the board, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.”

SECTION 18. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Section 2.22 to read as follows:

“Section 2.22. PUBLIC TESTIMONY. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.”

SECTION 19. Section 3.07, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 3.07. ENFORCEMENT PROCEEDINGS. The board [s] or the executive director, after notification to [secretary when authorized by] the board, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, [regulations,] orders, [variances] or other decisions of the board.”

SECTION 20. Subsection (c), Section 3.09, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"(c) Any person may appear and be heard at the hearing on any rules ~~[or regulations]~~. A record of the names and addresses of the persons appearing shall be made by the executive director ~~[secretary]~~. Any person heard or represented at the hearing, or requesting notice of the action taken by the board, shall be sent written notice by mail of the action taken by the board."

SECTION 21. Subsection (e), Section 3.10, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"(e) The board, when it deems control of air pollution is necessary, shall establish rules ~~[and regulations]~~ concerning the control of emissions of particulate matter from plants handling, loading and unloading, drying, manufacturing, and processing the following agricultural products: grain, seed, legumes and vegetable fibers, according to a formula derived from the process weight of the materials entering the process. Any person affected by a rule ~~[or regulation]~~ issued under the authority of this subsection may use the process weight method for controlling and measuring the emissions from the plant, or any other method selected by that person which the board or the executive director ~~[secretary]~~, when so authorized by the board, finds will provide adequate emission control efficiency and measurement."

SECTION 22. Subchapter C, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 3.101 to read as follows:

"Section 3.101. **MEMORANDUM OF UNDERSTANDING.** The board shall adopt as a rule any memorandum of understanding between the board and any other state agency."

SECTION 23. Subsections (a) and (b), Section 3.14, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) Whenever it appears to the board or the executive director ~~[secretary]~~ that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the board or the executive director ~~[secretary]~~ shall, with the concurrence of the governor, order any persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. The order shall fix a time and place for a hearing to be held before the board, which shall be held as soon after the order is issued as is practicable. The requirements of Section 3.17 as to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as in the judgment of the board or the executive director ~~[secretary]~~ is practicable under the circumstances. Not more than twenty-four hours after the commencement of the hearing, and without adjournment of the hearing, the board shall affirm, modify or set aside the order.

"(b) Whenever the board or the executive director ~~[secretary]~~ finds that emissions from one or more air contaminant sources ~~are [is]~~ causing imminent danger to human health or safety, but that there is not a generalized condition of air pollution of the type referred to in Subsection (a) of this section, the board or the executive director ~~[secretary]~~ may order the person or persons responsible for the emissions to reduce or discontinue the emissions immediately. In such event, the provisions in Subsection (a) of this section pertaining to a hearing before the board, notice, and affirmance, modification or setting aside of orders shall apply."

SECTION 24. Subsections (a) and (b), Section 3.16, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) The board may delegate the authority to hold hearings called by the board to:

"(1) one or more members;

"(2) the executive director ~~[secretary]~~; or

"(3) one or more employees of the board ~~;~~ or

~~"(4) with the concurrence of the state commissioner of health, one or more employees of the State Department of Health]."~~

"(b) Except for those hearings required to be held before the board under Section 3.14 of this Act, the board may authorize the executive director ~~[secretary]~~ to call and hold hearings on any subject on which the board may hold a hearing. The board also may authorize the executive director ~~[secretary]~~ to delegate the authority to hold any hearing called by the executive director ~~[secretary]~~ to one or more employees of the board ~~[or, with the concurrence of the state commissioner of health, to one or more employees of the State Department of Health]."~~

SECTION 25. Section 3.20, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.20. **INVESTIGATIONS; ACTION ON VIOLATIONS.** (a) The executive director ~~[secretary]~~ is authorized to make or cause to have made investigations as he may deem advisable in administering the provisions of this Act and the rules, ~~[regulations,]~~ orders and

determinations of the board, including without limitation investigations of violations and general air pollution problems or conditions. The executive *director* [secretary] shall make or cause to have made such investigations as may be requested or directed by the board.

“(b) Whenever it appears that any provision of this Act or any rule, [regulation,] determination or order of the board is being violated, the board, or the executive *director* [secretary] when authorized by the board or this Act, may proceed under Section 4.02 of this Act, or hold a public hearing and enter orders on the alleged violation, or take any other action authorized in this Act as the facts may warrant.

“(c) If a public hearing is held on an alleged violation, the board or the executive *director* [secretary] shall give notice of the hearing to the person complained against and to such other interested persons as the board or executive *director* [secretary] may designate. The executive *director* [secretary], on behalf of the board, at the request of the person complained against, shall subpoena and compel the attendance of those witnesses, and shall require the production for examination of any book or paper relating to the matter under investigation at the hearing, as that person may reasonably designate.”

SECTION 26. Section 3.27, Texas Clean Air Act, as amended (Article 4477-5, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 3.27. CONSTRUCTION PERMIT. (a) Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this State shall apply for and obtain a construction permit from the board before any actual work is begun on the facility. The board may *issue special permits to* [exempt] certain facilities. *The board by rule may exempt certain* [or] types of facilities from the requirements of Section 3.27 and Section 3.28 if it is found upon investigation that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere.

“(b) *In considering the issuance of a permit for construction or modification of any facility within 3,000 feet or less of an elementary, junior high, or senior high school, the board shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending these school facilities.*

“(c) *No person may commence construction on a permanently or temporarily located concrete plant (except a concrete plant located temporarily in the right-of-way of a public works project) that accomplishes wet batching, dry batching, or central mixing under an exemption adopted by the board pursuant to Subsection (a) of this section, without first complying with the notice and opportunity for hearing provisions of Subsections (a) and (c) of Section 3.271 of this Act. For purposes of this subsection, only those persons actually residing in a permanent residence within one-quarter mile of the proposed plant may be a ‘person who may be affected’ as that term is used in Subsection (c) of Section 3.271 of this Act.*

“(d) Along with the application for the permit or the special permit, the person shall submit copies of all plans and specifications necessary for determining whether the proposed construction will comply with applicable air control standards and the intent of the Texas Clean Air Act, together with any other information which the board considers necessary.

“(e) [(e)] *If, from the information available to the board or, if a hearing is held under Subsection (c) of Section 3.271 of this Act, from any information presented at that hearing [submitted under subsection (b) of this section], the board finds the proposed facility for which a permit or a special permit is sought will utilize at least the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility and no indication that the emissions from the proposed facility will contravene the intent of the Texas Clean Air Act, including protection of the health and physical property of the people, the board shall grant within a reasonable time a permit to construct or modify the facility. If the board finds that the emissions from the proposed facility will contravene these standards or will contravene the intent of the Texas Clean Air Act, it shall not grant the permit or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.*

“(f) [(d)] *If the person applying for a permit or special permit makes the alterations in his plans and specifications to meet the specific objections of the board, the board shall grant the permit or special permit, but the board may refuse to accept new applications by a person until all previous objections of the board to the previously submitted plans of that person are rectified. If the person fails or refuses to alter the plans and specifications, the board shall refuse to grant the permit or special permit.*

“(g) [(e)] *A permit, special permit, or exemption granted under this section may be revoked by the board if the board later determines that any of the terms of the permit, special permit, or exemption are being violated or that emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act.*

“Proceedings to revoke the permit may be commenced by the board if any violation at the proposed facility is continued after 180 days following the notice of violation provided pursuant to Subsection (a) of Section 4.02 of this Act. The board may consider good faith efforts to correct the violation in deciding whether to revoke a permit, special permit, or exemption.”

“(h) [(f)] The board or the executive director may seek an injunction in a court of competent jurisdiction to halt work on a facility which is being done without a permit, special permit, or exemption issued under this section or is in violation of the terms of a permit, special permit, or exemption issued under this section.

“(i) [(g)] The powers and duties set out in Section 3.27 and Section 3.28 may be delegated by the board to the executive director. The applicant or any person affected by the decision of the executive director may appeal to the board any decision made by the executive director under these sections.

“(j) [(h)] Provided, however, that at the time this Act becomes effective no provision of this Act shall apply where any person, firm, partnership or corporation has let any contract, or begun any construction for any addition, alteration or modification to any new or existing facility. Any contracts under this subsection shall have a beginning construction date no later than six months after the effective date of this Act to qualify for this exemption.”

SECTION 27. Subchapter C, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Section 3.271 to read as follows:

“Section 3.271. NOTICE AND OPPORTUNITY FOR HEARING. (a) Within the period required by board rule, a person applying for a permit or special permit under Section 3.27 or review of a permit under Subsection (g) of Section 3.28 of this Act shall publish notice of intent to obtain a permit or special permit or permit review at least one time in a newspaper with general circulation in the county in which the facility is located or to be located. Publication of additional notice may be required by board rule. Notice must include:

“(1) a description of the location or proposed location of the facility;

“(2) the fact that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a hearing from the board;

“(3) the manner in which the board may be contacted for further information; and

“(4) any other information the board by rule requires.

“(b) At the site of any facility or proposed facility for which a permit application is submitted under Section 3.27 or a review application is submitted under Subsection (g) of Section 3.28 of this Act, the applicant shall place a sign declaring the filing of an application for a permit or review of a permit for a facility at the site and stating the manner in which the board may be contacted for further information. The board shall adopt any rules necessary to carry out this subsection.

“(c) If a person who may be affected by the emissions makes a request for a hearing within the period set for hearing requests by board rules, the board or its delegate must hold a public hearing on the permit, review, or special permit application before granting the permit, continuance, or special permit. The board is not required to hold a hearing if the basis of a request is determined to be unreasonable. In addition, if an elected official from the general area in which the facility or proposed facility is located makes a request for a hearing within the period set for hearing requests by board rules, the board or its delegate must hold a hearing on the permit, review, or special permit application before granting the permit, continuance, or special permit. The board shall give notice of a hearing under this subsection as provided by Section 3.17 of this Act. For purposes of this subsection, elected official means a member of the Texas Legislature.”

SECTION 28. Subsection (e), Section 3.28, Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended and Subsections (g) and (h) are added to read as follows:

“(e) A permit issued under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the facility contravene air pollution control standards set by the board or contravene the intent of the Texas Clean Air Act. Proceedings to revoke the permit may be commenced by the board if any violation at the proposed facility is continued after 180 days following the notice of violation provided pursuant to Subsection (a) of Section 4.02 of this Act. The board may consider good faith efforts to correct the violation in deciding whether to revoke a permit, special permit, or exemption.

“(g) A permit issued pursuant to this section is subject to review every 15 years. The board by rule shall establish a deadline by which the holder of a permit issued under this section shall submit an application for review of the permit, the general requirements which must be met by such applicant, and the procedures for reviewing and acting on applications for review. No less than 180 days prior to the expiration of the 15th year following the issuance or continuation of a permit under this section, the board shall provide by United States Mail, registered or certified, written notice to the holder of the permit that such permit is scheduled for review in accordance with the requirements of this subsection. Such notice shall include a description of the procedure for filing

an application for review and the information to be included in the application. In determining whether and under which conditions operating permits should be continued, the board shall consider, at a minimum, whether the facility is or has been in substantial compliance with the provisions of this Act and the terms of the existing permit and the condition and effectiveness of existing emission control equipment and practices. The board shall impose as a condition for continuance of an operating permit those requirements determined to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area. In no event shall the board impose requirements less stringent than those of the existing permit, during this review, unless the board determines that any proposed change will meet the requirements of Section 3.27 of this Act. The board shall either continue a permit or submit to the applicant the report hereinafter required no later than 180 days after the application for review is filed. If the board determines that the facility will not meet the requirements for continuance of the operating permit, it shall set out in a report to the applicant the basis for its determination and establish a schedule to which the applicant must adhere in meeting the board's requirements. The schedule set forth in the report shall include a final date for meeting the board's requirements and shall require completion of such action as expeditiously as possible. If the applicant meets the board's requirements in accordance with the schedule set forth in the report, the board shall continue the permit. If the applicant does not meet the board's requirements for corrective action by the final date specified in the board's report, the applicant shall be required to show cause in a contested case proceeding conducted pursuant to the requirements of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) why the permit should not expire immediately. The applicant's permit shall remain effective until the final date specified in the board's report to the applicant or until the existing permit is continued or until the date specified in any order of the board entered following a contested case proceeding held pursuant to this subsection. If the holder of an operating permit to which the board has mailed notice of the requirements of this subsection does not apply for review of that permit by the date specified by the board pursuant to this subsection, the permit shall expire 15 years following the date it was issued or last continued. Nothing in this section shall affect the board's authority to commence enforcement action pursuant to Section 4.02 of this Act.

"(h) Each facility operating without a permit because it was constructed or construction on it had begun before the board's permitting program was implemented shall be registered with the board not later than the 180th day after the effective date of this subsection. The requirements of this subsection shall not apply to oil and gas production and distribution facilities which do not constitute major facilities/stationary sources as defined in the rules of the board, and the board, pursuant to Subsection (a) of Section 3.27 of this Act shall exempt other facilities or types of facilities from the requirements of this subsection if it is determined that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere. The person in charge of the facility shall pay any fees in connection with registration established by the board under Section 3.29 of this Act. For purposes of this subsection and the registration fee required by Section 3.29 of this Act, a registrant may treat two or more facilities which compose an integrated system or process as a single facility where a structure, device, item of equipment, or enclosure which constitutes or contains a given source operates in conjunction with and is functionally integrated with one or more other such structures, devices, items of equipment, or enclosures, provided that in any case sufficient information must be submitted to enable the board to develop an accurate inventory of emissions of air contaminants in the state and to discharge its other duties under this Act. Not later than the 30th day after the effective date of this Act, the board shall publish notice sufficient to inform operators of those facilities of the registration requirement. This notice shall include at a minimum a description of the types and sizes of facilities required to register, the information to be submitted at registration, and the manner in which the board may be contacted for additional information concerning the applicability of this requirement. The board may require any information it determines is necessary in conjunction with the registration of the facilities. This subsection shall not apply to facilities affected by Subsection (e) of Section 3.10 of this Act, livestock confinement facilities, facilities used solely in conjunction with the operation of a farm or ranch, or facilities of the size and type which would meet the requirements for special permits under Section 3.27 of this Act."

SECTION 29. Section 3.29, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.29. [PERMIT AND VARIANCE] FEES. (a) The board shall adopt, charge, and collect a fee for each application for a permit, permit amendment or revision, or special permit submitted under Section 3.27 or a registration submitted under Subsection (h) of Section 3.28 of this Act, for each application for review of a permit under Subsection (g) of Section 3.28 of this Act, and for inspections performed in enforcement of this Act or rules adopted by the board under this Act. For purposes of such fees, the board shall treat two or more facilities which compose an integrated system or process as a single facility where a structure, device, item of equipment, or

enclosure which constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other such structures, devices, items of equipment, or enclosures. Fees assessed under this section shall not be less than \$50 nor more than \$50,000.

"(b) The amount of the fees shall be established by board rule and must be set so that the board can recover not less than 50 percent of the actual annual expenditures by the board in:

"(1) reviewing and acting on permits or special permits;

"(2) amending and reviewing permits;

"(3) inspecting permitted, exempted, specially permitted, and registered facilities; and

"(4) enforcing the rules and orders adopted and permits, special permits, and exemptions issued under this Act.

"(c) Nothing in this Act shall be construed as prohibiting the use of variances. Variances are to be considered an exceptional form of relief to be granted only upon the demonstration that compliance with any provision of this Act or rule or order of the board will result in an arbitrary and unreasonable taking of property [may adopt rules relating to charging and collecting fees for permits and variances, including schedules of fees to be charged. The fees shall be sufficient to cover the reasonable costs of review and action by the board on a permit or variance application and of implementing and enforcing the terms and conditions of the permit or variance. Fees adopted under this section shall be not less than \$50 nor more than \$7,500].

SECTION 30. Subchapter C, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 3.31 to read as follows:

"Section 3.31. **FACILITY.** The term 'facility' as used in this Act means any discrete or identifiable structure, device, item or equipment, or enclosure which constitutes or contains a given stationary source, as defined in Subdivision (2) of Section 1.03 of this Act, together with any appurtenances. Emission control equipment shall not be considered appurtenances. Mines, quarries, and roads shall not be considered facilities."

SECTION 31. Section 4.01, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 4.01. **UNAUTHORIZED EMISSIONS PROHIBITED.** (a) Except as authorized by a rule [~~regulation, variance~~] or [~~other~~] order of the board, no person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity which causes or contributes to, or which will cause or contribute to, a condition of air pollution.

"(b) No person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of this Act or of any rule [~~regulation, variance, [or other]~~] order of the board.

"(c) Any person who violates any provision of this Act or of any rule [~~regulation, variance,] or [other]~~ order of the board is subject to a civil penalty of not less than \$50 nor more than \$25,000 [~~\$1,000~~] for each day of violation and for each act of violation, as the court or jury may deem proper, to be recovered in the manner provided in this Subchapter."

SECTION 32. Section 4.02, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 4.02. **ENFORCEMENT BY SUIT [BOARD].** (a) Whenever the executive director finds that a person has violated, is violating, or threatening to violate any provision of this Act or of any rule or order of the board, he shall within five days notify that person of the apparent violation and:

"(1) the board or the executive director may cause a suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$25,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty;

"(2) notwithstanding the authority conferred in Subdivision (1) of Subsection (a) of this section, if the apparent violation or threat of violation of a nonclerical requirement continues more than 30 days after receipt of the notice provided pursuant to this section, the executive director shall institute proceedings pursuant to Subsection (b) of Section 3.20 of this Act to enter an appropriate order providing for compliance within 180 days of the notice of violation. However, if the board determines that good faith efforts to correct the violation have been made, the board may adopt an order pursuant to Subsection (b) of Section 3.20 of this Act providing for compliance beyond 180 days after issuance of the notice of violation. It is intended that good faith effort be strictly interpreted by the board while giving due consideration to economic reasonableness and technical practicability; and

“(3) notwithstanding the authority conferred in Subdivision (1) of Subsection (a) of this section, if a violation of an order entered pursuant to Subdivision (2) of Subsection (a) continues for more than 180 days following the receipt of the original notice of violation, the board or executive director shall (i) institute a suit, as described in Subdivision (1) of Subsection (a) of this section, for civil penalties and appropriate injunctive relief and/or commence an action under either Subsection (f) of Section 3.27 or Subsection (e) of Section 3.28 of this Act to revoke a permit, special permit or exemption, and/or (ii) commence an action for administrative penalties pursuant to Section 4.041 of this Act. If the apparent violation or threat of violation would materially affect human health and safety, the suit shall be instituted immediately. [it appears that a person has violated or is violating, or is threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, then the board, or the executive secretary when authorized by the board, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, the district court shall grant the injunctive relief the facts may warrant.]

“(b) At the request of the board [] or the executive director [secretary when authorized by the board], the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

“(c) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule or order of the board, the district court shall grant the injunctive relief the facts may warrant.

“(d) The agency shall prepare a monthly report on enforcement actions taken and the resolution of such actions. The report shall be an agenda item for discussion by the board at each regularly scheduled meeting. When an enforcement action involves a suit filed for injunctive action or civil penalties or both, the report shall indicate the actual or projected time for resolution of the suit. Copies of the report and minutes of the meeting reflecting any action taken by the board in regards to the report shall be filed with the governor and the attorney general.”

SECTION 33. Subchapter D, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Sections 4.041 and 4.042 to read as follows:

“Section 4.041. **ADMINISTRATIVE PENALTY.** (a) If a person violates this Act or a rule or order adopted or permit issued under this Act, the person may be assessed a civil penalty as provided by this section.

“(b) The penalty may be in an amount not to exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

“(c) In determining the amount of the penalty, the board shall consider:

“(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts; and the hazard or potential hazard created to the health or safety of the public;

“(2) the history of previous violations;

“(3) the amount necessary to deter future violations;

“(4) efforts to correct the violation; and

“(5) any other matters that justice may require.

“(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based the conclusion that a violation occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (c) of this section.

“(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged. The report shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

“(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the board written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

“(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the board by order shall either assess that penalty or order a hearing to be held on the recommendations in the executive director’s report. If the board assesses the penalty recommended by the report, the board shall give written notice to the person charged of its decision and the person charged shall pay the penalty.

“(h) If the person charged requests or the board orders a hearing, the executive director shall call a hearing and give notice of the hearing as provided by Section 3.17 of this Act. The hearing shall be held by a hearing examiner designated by the board. The hearing examiner shall make findings of fact and promptly issue to the board a written decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the board by order may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes).

“(i) The board shall give notice of its decision to the person charged, and if the board finds that a violation occurred and a civil penalty has been assessed, the board shall give to the person charged written notice of its findings, of the amount of the penalty, and of his right to judicial review of the board’s order. If the board finds that a violation occurred and a civil penalty has been assessed, the board shall also publish notice of these decisions in the Texas Register within 10 days.

“(j) Within the 30-day period immediately following the day on which the order is final as provided by Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes), the person charged with the penalty shall:

“(1) pay the penalty in full; or

“(2) if the person files a petition for judicial review of either the amount of the penalty or the fact of the violation or of both the fact of the violation and the amount of the penalty:

“(A) forward the amount to the board for placement in an escrow account; or

“(B) in lieu of payment into escrow, post with the board a supersedeas bond in a form approved by the board for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

“(k) Failure to forward the money to or to post the bond with the board within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (g) or (j) of this section, the board or the executive director may forward the matter to the attorney general for enforcement.

“(l) Judicial review of the order or decision of the board assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes).

“(m) If the penalty is reduced or not assessed, the board shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the board under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the board under Subsection (j) of this section and ending on the date the penalty is remitted.

“(n) A penalty collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

“(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

“Section 4.042. REMEDIES SUPPLEMENTAL. The remedies provided in this Act to prevent, abate, or penalize violations of the board’s rules, orders, or permits or the causing of or contributing to a condition of air pollution are supplemental of all other causes of actions and remedies available to the state at common law or by other statutes.”

SECTION 34. The Texas Clean Air Act (Article 4477-5, Vernon’s Texas Civil Statutes), is amended by adding Subchapter G to read as follows:

“SUBCHAPTER G. CLEAN AIR STUDY COMMITTEE

“Section 7.01. CLEAN AIR STUDY COMMITTEE. The Clean Air Study Committee is created.

“Section 7.02. COMPOSITION. The committee is composed of:

“(1) four members appointed by the governor, three of whom are representatives of business or industry and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment;

“(2) three members appointed by the lieutenant governor, two of whom are state senators and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment; and

“(3) three members appointed by the speaker of the house of representatives, two of whom are state representatives and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment.

“Section 7.03. **CHAIRMAN.** The governor shall appoint the chairman of the committee.

“Section 7.04. **MEETINGS.** The committee shall meet at least quarterly and at other times at the call of the chair.

“Section 7.05. **POWERS AND DUTIES.** (a) The committee shall study:

“(1) facilities that emit contaminants into the air and that have been allowed to operate without permits from the board because they were constructed or construction on them had begun before the board's permitting program was implemented;

“(2) the issuance of renewable permits; and

“(3) regulation of emissions into the air from ships.

“(b) Not later than December 1, 1986, the committee shall complete and have ready to submit a report to the 70th Legislature. The report shall include the committee's recommendation on whether or not to require operating permits for continued operation of facilities that have been operating without permits because they were constructed or construction on them had begun before the board's permitting program was implemented. If the committee recommends that operating permits be required, the committee also shall discuss procedures under which those facilities may be issued a permit. In addition, the committee shall review and make recommendations concerning the issuance of renewable permits, the length of each renewal period, and the procedure for renewal of a permit. The committee also shall include a recommendation on whether or not to regulate emissions into the air from ships under this Act. Finally, the committee shall include a discussion of the options it considered in making its recommendations. The committee shall accompany each of its recommendations with a discussion of the effect of that recommendation on:

“(1) air quality;

“(2) the regulated industry; and

“(3) the board's regulatory authority, including any additional resources the board would require to implement and carry out the recommendation.

“(c) The board shall develop and implement a continuing data collection system for identifying each facility operating without an operating permit because it was constructed or construction on it had begun before the board's permitting program was implemented and for collecting data on emissions from those facilities. Owners and operators of the facilities shall cooperate with and assist the board in obtaining data. The board shall provide to the committee and shall submit to the 70th Legislature a report on information collected through the data collection system, including a listing by legislative district of facilities operating without an operating permit.

“(d) The board shall provide staff for the committee as necessary to assist the committee in the performance of its duties.

“Section 7.06. **EXPIRATION.** This subchapter expires January 1, 1987.”

SECTION 35. Subsections (d) and (g), Section 142, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), are amended to read as follows:

“(d) The Public Safety Commission shall establish a parameter motor vehicle emissions inspection and maintenance program for vehicles registered in any county in this state which does not meet National Ambient Air Quality Standards and for which the Texas Air Control Board has adopted a resolution requesting the department to institute such a program. The commission may establish any other motor vehicle emissions inspection and maintenance program required by federal law or by a rule or order adopted under federal law.”

“(g) The Public Safety Commission may establish by rule an inspection fee in addition to the fee for compulsory inspection as provided by Subsection (c) of Section 141 of this Act for those vehicles inspected pursuant to Subsection (d) of this section. The [; and such] additional fee shall not exceed \$5 if only a parameter program is established and may not exceed \$10 if a program other than the parameter program is established under federal requirements.”

SECTION 36. Section 2.10, Sections 3.21 through 3.26, and Subsections (a), (b), (c), and (f) of Section 3.30, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), are repealed.

SECTION 37. This Act takes effect September 1, 1985, except Subsection (b) of Section 3.27, as added by Section 26 of this Act, takes effect immediately.

SECTION 38. The chairman of the Texas Air Control Board shall be designated as provided by Section 2.06, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), as amended by this Act, beginning either with the expiration of the term of the chairman serving on the effective date of this Act or with the occurrence on or after the effective date of this Act of a vacancy in the office of chairman, whichever occurs first. Until that time, the chairman serves as provided by Section 2.06 as it existed before amendment by this Act and that law is continued in effect for that purpose.

SECTION 39. Except for the provisions in Subsection (b) of Section 3.27, as added by Section 26 of this Act, the changes in law made by this Act by amending Section 3.27 and adding Section 3.271 of this Act apply only to an application for a permit for operation, construction, or modifications of a facility that may emit contaminants into the air if the application is filed on or after the effective date of this Act. An application for a permit filed before the effective date of this Act is governed by the Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes) as it existed before amendment by this Act and that law is continued in effect for that purpose.

SECTION 40. The changes in law made by this Act by amending Sections 4.01 and 4.02, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), and by adding Section 4.041, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), apply only to the penalty for a violation occurring on or after the effective date of this Act. A violation occurring before the effective date of this Act is governed by the law that was in effect when the violation occurred.

SECTION 41. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 10, 1985, by a viva-voce vote; May 26, 1985, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 1985, House granted request of the Senate; May 27, 1985, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 25, 1985, by a non-record vote; May 26, 1985, House granted request of the Senate for appointment of Conference Committee; May 27, 1985, House adopted Conference Committee Report by the following vote: Yeas 135, Nays 3, one present not voting.

Approved: June 14, 1985

Effective: September 1, 1985, except Section 27, which is effective August 26, 1985.