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A Survey of Environmental Laws Enacted by the Seventy-Second Texas Legislature

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A SURVEY OF ENVIRONMENTAL LAWS ENACTED BY THE SEVENTY-SECOND TEXAS LEGISLATURE

By

Gregory M. Ellis and B. J. Wynne***

| | | |
|------|---|------|
| I. | Introduction | 1222 |
| II. | State Environmental Program Consolidation and Enhancement | 1222 |
| | A. Overview | 1222 |
| | B. Consolidation of Agency Powers and Duties | 1223 |
| | C. Texas Clean Air Act | 1226 |
| | D. Purchase of State-Owned Natural Gas | 1227 |
| | E. Water Utility Assessments and Municipal Fines | 1227 |
| | F. Low Level Radioactive Authority Assessment | 1228 |
| | G. Wetlands Mitigation Bank | 1228 |
| | H. Environmental Crimes | 1228 |
| | I. Legislative Oversight | 1229 |
| | J. Effective Dates | 1230 |
| III. | Hazardous and Solid Waste | 1230 |
| | A. Texas Hazardous Waste Policy Act of 1991 | 1230 |
| | 1. Hazardous Waste Facility Needs Assessment | 1230 |
| | 2. Additional Procedural and Evidentiary Standards | 1231 |
| | 3. Hazardous Waste Reduction | 1237 |
| | B. Hazardous Waste Definition and Fees | 1237 |
| | C. Hazardous and Solid Waste Reduction | 1238 |
| | D. Waste Recycling Programs and Incentives | 1239 |
| | E. Miscellaneous Hazardous and Solid Waste Legislation ... | 1240 |
| IV. | Miscellaneous Acts | 1240 |
| | A. Water Quality | 1240 |
| | B. Oil Spill Response | 1241 |
| | C. Wetlands and Coastal Zone Management | 1241 |
| | D. Environmental Impact of Highway Construction | 1242 |
| | E. Petroleum Storage Tank Remediation | 1242 |
| | F. Ethics Bill | 1243 |
| V. | Conclusion | 1244 |

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I. INTRODUCTION

Since the Seventy-second Texas Legislature convened in January, elected public policy makers in the legislative and executive branches of state government have engaged in an unprecedented effort to respond to heightened public concern about the environment. The result of this activity was a flurry of bills and resolutions aimed at addressing both perceived and real environmental problems in the nation's third most populous state. In the regular legislative session and the two subsequent special sessions 662 bills were introduced dealing with environmental regulation and protection and over 129 were enacted.

This Article is a survey of the most significant changes in Texas environmental law resulting from this recent legislative activity. An attempt is made to include some preliminary analysis from the perspective of those who are responsible for implementing these changes. One must understand, however, that a complete appreciation of the full dimensions and contours of the changes wrought by the Seventy-second Legislature may take years.

II. STATE ENVIRONMENTAL PROGRAM CONSOLIDATION AND ENHANCEMENT

A. Overview

After an unsuccessful attempt during its regular session, the Texas Legislature enacted the most sweeping reorganization of the administrative structure of the state's environmental regulatory program ever undertaken.¹ The voluminous Senate Bill 2 consolidates most of the state's environmental regulatory programs under the administration of the Texas Water Commission (Commission). On March 1, 1992 the solid waste division, water hygiene division, and radioactive waste disposal permit functions of the Texas Department of Health (TDH) will move to the Commission.² Both the Board of Irrigators and Water Well Drillers Board will move to the Commission on September 1, 1992.³ On September 1, 1993 the Texas Air Control Board (TACB) will be abolished and all its functions and responsibilities will move to the Commission.⁴ The Commission's name will then change to the Texas

1. Act of July 12, 1991, 72d Leg., 1st C.S., ch. 3, 1991 Tex. Sess. Law Serv. 4 (Vernon). (An act "relating to the oversight and regulation of the state's environmental resources, natural resources, and energy resources; providing for the issuance of bonds by mitigation project participants; creating offenses and providing civil and criminal penalties.") [hereinafter Senate Bill 2].

2. *Id.* § 1.088, 1991 Tex. Sess. Law Serv. at 43.

3. *Id.* § 1.089, 1991 Tex. Sess. Law Serv. at 43.

4. *Id.* § 1.086, 1991 Tex. Sess. Law Serv. at 42. Texas House Bill 7 § 1.09 also consolidates these same programs by moving the authority to the Commission. Act of Aug. 30, 1991, 72d Leg., 1st C.S., ch. 15, § 1.09, 1991 Tex. Sess. Law Serv. 297-98 (Vernon) [hereinafter House Bill 7]. Section 311.025(b) of the Texas Government Code requires that amendments to the same statute enacted by the same session of the legislature should be read together unless inconsistent. TEX. GOV'T CODE ANN. § 311.025(b) (Vernon 1988). The language of House Bill 7, which is vague and general to the extreme, is not inconsistent with Senate Bill 2. Therefore, the more specific provisions of Senate Bill 2 should be followed.

Natural Resources Conservation Commission.⁵

The consolidation of state environmental programs effected by Senate Bill 2, while sweeping in scope, is far from complete. The Bill does not create a state environmental protection agency reflective of the federal model. Generally, the Bill does not include the environmental regulatory programs administered by statewide elected officials in the executive branch. Accordingly, the Railroad Commission of Texas will continue to regulate the environmental impacts of oil and gas exploration and production. Similarly, the Texas Department of Agriculture will continue to regulate the environmental impacts of agricultural chemical use. Finally, the General Land Office was given expanded responsibility in the areas of wetlands protection,⁶ coastal zone management, and coastal oil spills.⁷

Senate Bill 2 also contains the provisions of the Texas Clean Air Act,⁸ the state's response to the recent federal legislation. In addition, a water rate regulatory assessment is imposed⁹ and new criminal penalties for violations of environmental law are provided.¹⁰

B. Consolidation of State Environmental Programs

Article I of Senate Bill 2 amends seven chapters and adds three new chapters to the Texas Water Code, amends seven chapters of the Texas Health and Safety Code, and amends five bills previously enacted during the regular legislative session. Most of the amendments simply change the necessary definitions to consolidate authority for environmental protection programs in the Commission.¹¹ There are, however, several changes in the substantive law within Article I.

The Texas Water Code is amended to create a transitional organization structure that establishes four deputy directors: one for each area of concern for the Commission (air, water, and waste) and one for administration.¹² Although the original version allowed for as many deputies as the director felt necessary, the new statute should not be seen as either a maximum or limitation. The General Appropriations Act allows the executive director to create exempt positions in accordance with standards set by the Governor

5. Senate Bill 2, *supra* note 1, § 1.085, 1991 Tex. Sess. Law Serv. at 42.

6. *Id.* § 6.02, 1991 Tex. Sess. Law Serv. at 74.

7. *Id.* § 7.01, 1991 Tex. Sess. Law Serv. at 77 (to be codified as an amendment to TEX. NAT. RES. CODE ANN. § 61.067). See *infra* notes 216-23, and accompanying text.

8. *Id.* §§ 2.01-.391, 1991 Tex. Sess. Law Serv. at 46-71 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. §§ 382.003-.017).

9. *Id.* §§ 4.01, 1991 Tex. Sess. Law Serv. at 71 (to be codified as an amendment to TEX. WATER CODE ANN. § 5.235).

10. Senate Bill 2, *supra* note 1, §§ 8.04-.07, 1991 Tex. Sess. Law Serv. at 78-83 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. §§ 361.221, 361.2215, 361.222, 361.2225).

11. *Id.* § 1.024, 1991 Tex. Sess. Law Serv. at 8-14 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 341.040).

12. *Id.* § 1.0171, 1991 Tex. Sess. Law Serv. at 7 (to be codified as an amendment to TEX. WATER CODE ANN. § 5.222).

and the Legislative Budget Board.¹³ This authority, read in conjunction with the provisions of Senate Bill 2, appears to give the Commission the authority to appoint four or more deputy directors.¹⁴

Senate Bill 2 provides a specific limit on the amount of time within which the Commission must act on permit applications.¹⁵ The Bill specifically requires "all permit decisions shall be made within 180 days of the receipt of the permit application or application amendment or the determination of administrative completeness, whichever is later."¹⁶ A determination of administrative completeness must wait until after the permit has been received. Therefore, the language implying a later date for receipt of applications and amendments seems to indicate that the 180 day countdown would begin again after the receipt of any new filings. This section also specifies that the deadline does not apply to any program delegated by the federal government,¹⁷ which currently includes hazardous waste regulation under the Resource Conservation and Recovery Act (RCRA)¹⁸ and the Underground Injection Control program.¹⁹ Federal delegation may also occur for the National Pollution Discharge Elimination System (NPDES),²⁰ which would then remove all wastewater discharge permits from the application of this section.

Other sections of Senate Bill 2 amend bills passed during the regular session of the legislature.²¹ Senate Bill 1099 from the regular session²² is amended to allow the Commission to continue processing pending applications for hazardous waste recycling facilities.²³ The moratorium mandated by Senate Bill 1099 continues to apply to commercial incinerators, cement kilns, and other facilities that burn waste-derived fuel.²⁴

The responsibility for licensing the disposal of radioactive substances is moved from the Railroad Commission of Texas and the TDH to the Commission.²⁵ Facilities required to obtain a disposal license include the Texas

13. Act of Aug. 30, 1991, 72d Leg., 1st C.S., ch. 19, art. V, Rider 18, 1991 Tex. Sess. Law Serv. 365 (Vernon).

14. It is interesting to note that the areas of responsibility delineated for each of the deputy directors exactly matches the division of responsibility between the House Natural Resources and House Environmental Affairs Committees (See Rule 3, §§ 11, 24, Texas House Rules).

15. Senate Bill 2, *supra* note 1, § 1.022, 1991 Tex. Sess. Law Serv. at 8 (to be codified at TEX. WATER CODE ANN. § 5.314).

16. *Id.*

17. *Id.*

18. Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (1988) (§§ 6921-6939b deal with hazardous waste management).

19. Protection of Underground Sources of Drinking Water, 42 U.S.C. § 300h (1988).

20. 33 U.S.C. § 1342(c) (1988).

21. Senate Bill 2, *supra* note 1, §§ 1.026, 1.0261-.029. Section 1.026 makes a clarifying amendment to Senate Bill 1340, enacted during the regular session. Sections 1.0261 through 1.029 also amend bills that passed during the regular session, either to eliminate duplicative language or clarify intent.

22. Hazardous Waste Policy Act of 1991, 72d Leg., R.S., ch. 296, § 1.01, 1991 Tex. Sess. Law Serv. 1237 (Vernon) [hereinafter Waste Policy Act].

23. Senate Bill 2, *supra* note 1, § 1.030, 1991 Tex. Sess. Law Serv. at 15.

24. Waste Policy Act, *supra* note 22, § 1.25, 1991 Tex. Sess. Law Serv. at 1253-54.

25. Senate Bill 2, *supra* note 1, §§ 1.050-.051, 1991 Tex. Sess. Law Serv. at 18-19 (to be

Low-Level Radioactive Waste Disposal Authority and any commercial facility for disposal of radioactive waste.²⁶ All necessary authority and appropriations for all programs currently at the TDH are transferred on March 1, 1992, except for those related to the disposal of radioactive substances.²⁷ The law in effect at the time the permit was filed will now govern pending permits.²⁸ Further, Senate Bill 2 provides that "Administrative hearings on applications for permits and prehearing proceedings which had commenced prior to the effective date of this article shall not be delayed or continued as a result of this article or any resulting organizational changes."²⁹ These provisions read together indicate that authority for pending radioactive waste disposal permits would not transfer but would remain with the current agency. However, any new permits filed after the transfer date of March 1, 1992 should be filed with the Commission.

A new subchapter is added to the Texas Water Code, creating a hydrographic survey program.³⁰ The Water Development Board (Board) is to administer this new program under which the Board is given the authority to contract with local governments to determine the probable life of their water supply.³¹ The program is supported entirely by fees paid to perform the studies.³²

New chapters are added to the Texas Water Code dealing with water well drillers,³³ water well pump installers,³⁴ and irrigators.³⁵ These new chapters are codifications of existing law, including House Bill 1648³⁶ from the regular session. No substantive changes have been made in the law, so these new chapters should be treated as any other codification.

Senate Bill 2 reinstates the moratorium on issuing wastewater discharge permits for Salado Creek in Bell County.³⁷ The relevant sections purport to

codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. §§ 401.411-415, 402.1511-.1512).

26. TEX. HEALTH & SAFETY CODE ANN. § 402.001 (Vernon 1991). Radioactive waste is divided into several categories: high-level, which must be disposed of in a federal facility; low-level, which must be disposed of at the Authority site; and other, which may be disposed of in a commercial facility. See Tex. Water Comm'n, 31 TEX. ADMIN. CODE §§ 449.1-451.4.

27. Senate Bill 2, *supra* note 1, § 1.088, 1991 Tex. Sess. Law Serv. at 43. This exception was created when the House passed Floor Amendment 5 which specifically deleted the language relating to the transfer of appropriations relating to radioactive waste disposal. H.J. OF TEX., 72d Leg., 1st C.S. 379 (1991).

28. Senate Bill 2, *supra* note 1, § 1.090(a), 1991 Tex. Sess. Law Serv. at 44.

29. *Id.* § 1.090(b), 1991 Tex. Sess. Law Serv. at 44.

30. *Id.* § 1.062, 1991 Tex. Sess. Law Serv. at 21 (to be codified at TEX. WATER CODE ANN. §§ 15.801-805).

31. *Id.* (to be codified at TEX. WATER CODE ANN. § 15.804(a)).

32. *Id.* (to be codified at TEX. WATER CODE ANN. § 15.804(b)).

33. Senate Bill 2, *supra* note 1, § 1.071, 1991 Tex. Sess. Law Serv. at 22-29 (to be codified at TEX. WATER CODE ANN. §§ 32.001-.019).

34. *Id.* § 1.072, 1991 Tex. Sess. Law Serv. at 29-33 (to be codified at TEX. WATER CODE ANN. §§ 33.001-.015).

35. *Id.* § 1.073, 1991 Tex. Sess. Law Serv. at 33-40 (to be codified at TEX. WATER CODE ANN. §§ 34.001-.015).

36. The Water Well Pump Installers Act, 72d Leg., R.S., ch. 697, § 2, 1991 Tex. Sess. Law Serv. 2499 (Vernon).

37. Senate Bill 2, *supra* note 1, §§ 1.0841, 1991 Tex. Sess. Law Serv. at 42.

amend an act passed during the Seventieth Legislature in 1987.³⁸ That act, however, expired on April 1, 1991.³⁹ The intent of the legislature is clear: to prohibit any new discharge permits in Salado Creek. Furthermore, the Code Construction Act⁴⁰ provides that repeal of a statute does not effect an amendment or reenactment of the statute. The two sections of the 1987 act amended by Senate Bill 2 were in effect reenacted, and therefore should be given full effect.

The last section of Article I of Senate Bill 2 provides clarifications, savings clauses, and other statements of legislative intent and direction, as well as a schedule for the transfer of authority through consolidation.⁴¹ Specifically provided are detailed schedules for hiring the executive director and deputy directors and for performing certain studies.⁴² The list of studies includes consolidation of support functions,⁴³ consolidation of laboratory functions,⁴⁴ and streamlining permit procedures.⁴⁵ At the same time, the Texas Natural Resource Conservation Commission is required to reduce the administrative workforce by twenty percent.⁴⁶

C. Texas Clean Air Act

Article II of Senate Bill 2 is the legislature's response to the recent amendments to the federal Clean Air Act.⁴⁷ Article II is designed to bring the state law into compliance with the new federal requirements. The changes range from new definitions to new criminal enforcement provisions.

Senate Bill 2 requires the TACB to adopt an air quality plan to attain the national ambient air quality standards, but allows the plan to consider the emissions from outside the United States.⁴⁸ The TACB is allowed to prove that the plan would have met the standards had no international emissions interfered.⁴⁹ This provision will be of particular importance to the City of El Paso.

Article II includes a variety of other provisions. For instance, the Small Business Stationary Source Assistance Program is created to coordinate information on pollution prevention and provide other services to small businesses.⁵⁰ To help meet this goal, a compliance advisory panel will advise the

38. Act of June 17, 1987, 70th Leg., R.S., ch. 395, 1987 Tex. Gen. Laws 1919.

39. *Id.* § 3(d).

40. TEX. GOV'T CODE ANN. § 311.031(c) (Vernon 1990).

41. Senate Bill 2, *supra* note 1, §§ 1.085-1.0991, 1991 Tex. Sess. Law Serv. at 42-46.

42. *Id.* § 1.097, 1991 Tex. Sess. Law Serv. at 44-45.

43. *Id.* § 1.097(c), 1991 Tex. Sess. Law Serv. at 45 (report deadline of March 1, 1994).

44. *Id.* § 1.097(d), 1991 Tex. Sess. Law Serv. at 45 (report deadline of September 1, 1994).

45. *Id.* § 1.097(e), 1991 Tex. Sess. Law Serv. at 45 (report deadline of January 1, 1995).

46. Senate Bill 2, *supra* note 1, § 1.0971, 1991 Tex. Sess. Law Serv. at 45.

47. Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399 (1990) (codified as amended at 42 U.S.C.A. §§ 7403-7671q (West Supp. 1990)).

48. Senate Bill 2, *supra* note 1, § 2.02, 1991 Tex. Sess. Law Serv. at 47 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 382.0172).

49. *Id.*

50. *Id.* § 2.05, 1991 Tex. Sess. Law Serv. at 48-49 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 382.0365).

TACB.⁵¹ The vehicle emissions program is also substantially changed.⁵² Most notably the program is no longer restricted to Harris County but applies statewide.

In addition, the Bill amends the permit issuance statutes to allow the TACB (and in 1993 the Commission) to issue a general permit for a number of single sources or several facilities located at the same site.⁵³ The Texas Health and Safety Code section which relates to construction permits is repealed⁵⁴ and several new sections are added to provide for permit consolidation, sampling and monitoring requirements, and new preconstruction permits.⁵⁵ The TACB is to enforce federal operating permits for federal sources.⁵⁶ Federal sources are defined as any facility subject to the permitting requirements of Title IV or V of the federal Clean Air Act.⁵⁷ A new fee structure is provided for the TACB which adds operating permit fees based on the emissions of the source⁵⁸ and a new vehicle inspection fee of two dollars.⁵⁹

Senate Bill 2 provides new criminal offenses and penalties as well as affirmative defenses.⁶⁰ One defense is that the conduct was freely consented to by the person endangered, a provision frequently labelled the "consent to death" by opponents of the measure.⁶¹

D. Purchase of State-Owned Natural Gas

Article III of Senate Bill 2 allows the General Land Office to review all major purchases of natural gas by state agencies to ensure the gas purchased was produced on state-owned land.⁶²

E. Water Utility Assessments and Municipal Fines

Article IV of Senate Bill 2 creates a new fee that is applied to investor-

51. *Id.*

52. *Id.* § 2.25, 1991 Tex. Sess. Law Serv. at 49 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 382.037).

53. Senate Bill 2, *supra* note 1, § 2.06, 1991 Tex. Sess. Law Serv. at 49 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 382.051).

54. *Id.*

55. *Id.* § 2.08, 1991 Tex. Sess. Law Serv. at 50-52 (to be codified at TEX. HEALTH & SAFETY CODE ANN. §§ 382.0511-.0515, 382.0517-.0518).

56. *Id.* § 2.10, 1991 Tex. Sess. Law Serv. at 52-54 (to be codified at TEX. HEALTH & SAFETY CODE ANN. §§ 382.0541-.0542).

57. *Id.* § 2.01, 1991 Tex. Sess. Law Serv. at 46 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 382.003(7)).

58. Senate Bill 2, *supra* note 1, § 2.19, 1991 Tex. Sess. Law Serv. at 59 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 382.0621).

59. *Id.* § 2.20, 1991 Tex. Sess. Law Serv. at 59-60 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 382.0622(1)).

60. *Id.* §§ 2.21, 2.22, 1991 Tex. Sess. Law Serv. at 61-63 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 382.091, to be codified at TEX. HEALTH & SAFETY CODE ANN. §§ 382.092-.095).

61. This new provision follows the language of the federal Clean Air Act. See discussion of criminal penalties, *infra* notes 77-82.

62. Senate Bill 2, *supra* note 1, § 3.01, 1991 Tex. Sess. Law Serv. at 71 (to be codified at TEX. NAT. RES. CODE ANN. §§ 31.401-.402).

owned utilities, water supply corporations, and water districts in support of the utility rate regulation program.⁶³ The Commission must also assess a penalty against cities that annex areas but fail to provide water and sewer services.⁶⁴ However, this section is limited in application to the City of Houston.

F. *Low-Level Radioactive Waste Disposal Authority Assessment*

Article V of Senate Bill 2 allows the Texas Low-Level Radioactive Waste Disposal Authority to collect fees from electric utilities who operate nuclear facilities.⁶⁵ The fees are intended to pay for planning, permitting, construction, and operation of a low-level radioactive waste disposal site in Texas.⁶⁶

G. *Wetlands Mitigation Bank*

Article VI of Senate Bill 2 creates a wetlands mitigation bank. The purpose of the bank is to provide mitigation credits to offset the adverse impacts to wetlands from construction projects.⁶⁷ State agencies or political subdivisions upon approval by the General Land Office, are to administer the bank.⁶⁸ "Political subdivision" is defined as a county with a population of 2.1 million or more, or any county adjacent to such a county.⁶⁹ The direct approval of the commissioners' court in which the political subdivision lies is also required.⁷⁰ This language implies that the definition restricts the applicability of the bank to political subdivisions located within counties of appropriate size, and not the county itself.

H. *Environmental Crimes*

Article VIII of Senate Bill 2 enhances both civil and criminal enforcement of the state's environmental protection statutes. Fines are increased for companies (not individual persons), and local governments that participated in the prosecution of the case share in the collected fines.⁷¹ Offenses of tampering, releasing hazardous waste, and failure to notify the appropriate agency of a release are added.⁷² Also created is the offense of violating Chapter 361 of the Texas Health and Safety Code in such a way that it places any other person "in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or

63. *Id.* § 4.01, 1991 Tex. Sess. Law Serv. at 71-72 (to be codified at TEX. WATER CODE ANN. § 5.235(n)).

64. *Id.*

65. *Id.* § 5.01, 1991 Tex. Sess. Law Serv. at 73 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 402.272).

66. *Id.*

67. *Id.* § 6.01(3), 1991 Tex. Sess. Law Serv. at 74.

68. Senate Bill 2, *supra* note 1, § 6.02(a), 1991 Tex. Sess. Law Serv. at 74-75.

69. *Id.* § 6.01(6), 1991 Tex. Sess. Law Serv. at 74.

70. *Id.* § 6.06, 1991 Tex. Sess. Law Serv. at 76.

71. *Id.* § 8.04, 1991 Tex. Sess. Law Serv. at 78-79 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.221).

72. Senate Bill 2, *supra* note 1, § 8.05, 1991 Tex. Sess. Law Serv. at 80 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.2215).

with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.”⁷³ This language comes directly from the newly enacted federal Clean Air Act Amendments.⁷⁴

Certain violations now must be referred to the attorney general for enforcement action.⁷⁵ These include discharging without a permit and violations by multiple offenders.⁷⁶ In the future, although the Commission will not handle such violations, there does not seem to be any prohibition against the attorney general re-referring a matter to the agency for administrative enforcement.

Senate Bill 2 repeals the existing criminal enforcement sections of the Texas Water Code,⁷⁷ and creates a new section which sets the new criminal offenses and penalties.⁷⁸ The new law makes it a crime to discharge a waste or pollutant that “causes or threatens to cause” pollution.⁷⁹ This offense is punishable by a fine of \$1,000 to \$25,000 and one year in jail if the act is intentional; or, a fine of \$100 to \$10,000 without having to prove a culpable mental state.⁸⁰ Also added are the offenses of tampering, making false statements, and failure to notify the appropriate agency of a release.⁸¹ The offense of knowingly or recklessly endangering an individual through release of a waste is created as well.⁸²

In addition, Senate Bill 2 substantially rewrites the litter laws.⁸³ These changes clarify the definitions,⁸⁴ increase the penalties,⁸⁵ and expand the jurisdiction of the attorney general to enforce the litter laws.⁸⁶

I. Legislative Oversight

Article IX of Senate Bill 2 requires all statements made by legislators in public hearings held under the applicable chapters of the Texas Health and

73. *Id.* § 8.06, 1991 Tex. Sess. Law Serv. at 80-82 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.222).

74. 42 U.S.C.A. § 7413 (West Supp. 1990).

75. Senate Bill 2, *supra* note 1, §§ 8.19-.20, 1991 Tex. Sess. Law Serv. at 90-91 (to be codified at TEX. WATER CODE ANN. § 26.123).

76. *Id.*

77. TEX. WATER CODE ANN. §§ 26.212 (Vernon 1991). The existing law contained two versions of § 26.212, one effective until NPDES delegation and the other effective upon delegation. Both sections were repealed by Senate Bill 2, *supra* note 1, § 8.22(a), 1991 Tex. Sess. Law Serv. at 91.

78. Senate Bill 2, *supra* note 1, § 8.22, 1991 Tex. Sess. Law Serv. at 91-93 (to be codified at TEX. WATER CODE ANN. § 26.2121).

79. *Id.*

80. *Id.* Maximum fines for persons other than an individual are higher.

81. *Id.*

82. *Id.* § 8.22(b), 1991 Tex. Sess. Law Serv. at 93-95 (to be codified at TEX. WATER CODE ANN. § 26.2125).

83. Senate Bill 2, *supra* note 1, § 8.161, 1991 Tex. Sess. Law Serv. at 84-88 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. §§ 365.011-.017).

84. *Id.* § 8.161, 1991 Tex. Sess. Law Serv. at 84-85 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 365.011).

85. *Id.* § 8.161, 1991 Tex. Sess. Law Serv. at 85-86 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. §§ 365.012-.013).

86. *Id.* § 8.767, 1991 Tex. Sess. Law Serv. at 86 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 365.015).

Safety Code to be added to the official record of the hearing.⁸⁷ This language is intended to overcome procedural and evidentiary problems sometimes caused by legislators' statements in administrative proceedings.

Article X creates a Legislative Natural Resources Board consisting of six members of the legislature serving *ex officio*.⁸⁸ This agency is charged with oversight of the consolidation effort to ensure compliance with the provisions of Senate Bill 2.⁸⁹

J. Effective Dates

Article XI provides the general effective date of September 1, 1991.⁹⁰ Several other sections, however, also provide specific effective dates as described above.⁹¹ In addition, all the new criminal provisions include a savings clause making them applicable only to conduct that occurs after the passage of Senate Bill 2.⁹²

III. HAZARDOUS AND SOLID WASTE

A. The Texas Hazardous Waste Policy Act of 1991

Texas produces more hazardous waste than any other state in the nation, an amount totaling approximately twenty percent of the nation's total.⁹³ In absolute terms, this amount will increase two to four times due to a recently revised federal regulatory definition of hazardous waste.⁹⁴ In response to public concerns raised by this relatively large volume of hazardous waste and the necessity of licensing commercial facilities to properly manage it, the legislature enacted the Texas Hazardous Waste Policy Act of 1991 (Act).⁹⁵ The Act represents an attempt to deal with hazardous waste policy in a comprehensive manner. It addresses public concerns about the need for and location of additional hazardous waste disposal facilities, while maintaining the ability to secure permits for necessary facilities.

1. Hazardous Waste Facility Needs Assessment

The Act requires the Commission to assess the need for commercial haz-

87. *Id.* §§ 9.01-.02, 1991 Tex. Sess. Law Serv. at 96 (to be codified at TEX. HEALTH & SAFETY CODE ANN. §§ 12.016, 382.0291).

88. Senate Bill 2, *supra* note 1, §§ 10.01-.02, 1991 Tex. Sess. Law Serv. at 97.

89. *Id.* §§ 10.03-.05, 1991 Tex. Sess. Law Serv. at 97.

90. *Id.* § 11.01, 1991 Tex. Sess. Law Serv. at 97.

91. *See supra* text accompanying notes 2-4.

92. Senate Bill 2, *supra* note 1, § 8.30, 1991 Tex. Sess. Law Serv. at 96.

93. Texas Water Commission, *1989 Capacity Assurance Plan for the State of Texas* (October 1989). *See also*, B.J. Wynne & Robert Hamby, *Interstate Waste: A Key Issue in Resolving the National Hazardous Waste Capacity Crisis*, 32 S. TEX. L. REV. — (forthcoming 1991).

94. *Id.*

95. Hazardous Waste Policy Act of 1991, 72d Leg., R.S., ch. 296, 1991 Tex. Sess. Law Serv. 1235 (Vernon) (to be codified as amended at TEX. HEALTH & SAFETY CODE ANN. § 361.003-.440 (effective June 7, 1991)) [hereinafter Waste Policy Act] ("An act relating to permits for certain facilities regulated by the Texas Air Control Board, the Texas Water Commission, or the Texas Department of Health, to pollution prevention, and to the disposal of certain solid waste; providing a penalty.").

ardous waste management capacity by January 1, 1992 followed by rulemaking.⁹⁶ By March 1, 1996 the Commission, in consultation with the TDH, must assess the need for commercial nonhazardous solid waste disposal capacity, followed by rulemaking.⁹⁷ To expedite the consideration of permits for the most needed technologies, as determined by the assessments, the rules shall provide a permitting process which: (1) encourages new and innovative disposal technologies, (2) grants hierarchical preferences, (3) emphasizes waste reduction, and (4) encourages inclusion of recycling and recovery components.⁹⁸ The Commission must update the assessments and related rules at least every two years.⁹⁹

2. *Additional Administrative Hearings Requirements*

In addition to the contested case hearing requirements of the Administrative Procedure and Texas Register Act,¹⁰⁰ the Commission must now hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed facility is to be located.¹⁰¹ In addition, "[t]he commission, on request of a person affected or as otherwise required by commission rule, [must] hold a public meeting on an application for a Class 3 modification or a major amendment to [a] . . . hazardous waste permit."¹⁰² Generally, these requirements codify current Commission practice.

The Act contains new requirements concerning the publication of notice of any required meeting according to a specified format. The applicant must pay the cost of notice.¹⁰³ The Commission shall require the applicant for a new solid waste management facility permit to mail notice of hearing to: (1) each residential or business address located within one-half mile of the proposed facility, and (2) each owner of real property located within one-half mile of the proposed facility listed in the real property appraisal records of the appraisal district.¹⁰⁴ The applicant must certify to the Commission that the notice mailings were made as required.¹⁰⁵

The Act also imposes bonding requirements on the applicant for a permit for a new hazardous waste management facility. The applicant must furnish

96. *Id.* § 1.02, 1991 Tex. Sess. Law Serv. at 1240 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0232, (Vernon Supp. 1991)).

97. *Id.* § 1.02, 1991 Tex. Sess. Law Serv. at 1241, (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0233). It is unclear whether this consultation will be necessary in light of the agency consolidation.

98. *Id.* § 1.02, 1991 Tex. Sess. Law Serv. at 1241-42 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0234).

99. *Id.*

100. TEX. REV. CIV. STAT. ANN. art. 6252, § 13a(13) (Vernon Supp. 1991).

101. Waste Policy Act, *supra* note 95, § 1.04, 1991 Tex. Sess. Law Serv. at 1242 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0791(a)).

102. *Id.*

103. *Id.* (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0791(f)).

104. *Id.* § 1.06, 1991 Tex. Sess. Law Serv. at 1242-43 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.081(a)).

105. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.081(b)).

a bond when requested by a person affected for a hearing on the permit application.¹⁰⁶ The bond assures payment of the costs of affected persons who provide information to the Commission on the question of the issuance of the permit.¹⁰⁷ Other requirements of the hearing process include a prohibition of *ex parte* communication between the examiner and a party or commission employee.¹⁰⁸

The Act provides for consideration of a variety of factors in the hearing process. The Commission may consider evidence of compliance or noncompliance by a permit applicant, or a final determination of noncompliance with federal statutes or any state's statutes in the preceding five years.¹⁰⁹ A party may offer such evidence and submit it into evidence at a hearing concerning the application.¹¹⁰

The Commission is also granted authority to deny, suspend, or revoke a permit based on environmental violations by the permit holder or applicant, indebtedness to the state, or for inability to ensure that the management of the hazardous waste management facility conforms or will conform to the applicable laws and the rules of the Commission.¹¹¹

The Act requires applicants to provide a broad array of information to the Commission.¹¹² Included is information deemed necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including the method an applicant intends to use to obtain financing for construction of the facility.¹¹³ The applicant must also show the monetary resources needed to close the facility properly.¹¹⁴ The Commission is allowed to order the disclosure of the identity of any competitor of the applicant who has provided funding for a party's participation in the hearing, and the amount of that funding.¹¹⁵ An applicant must also identify the nature of any known sources, types, and volumes of waste, both specific and potential, to be managed by the facility and any other related information the Commis-

106. Waste Policy Act, *supra* note 95, § 1.07, 1991 Tex. Sess. Law Serv. at 1243-44 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.082). The Commission may authorize use of other types of financial assurance.

107. *Id.* (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.082(g)). Additional authorization and restrictions to persons entitled to payment are imposed by § 1.09, 1991 Tex. Sess. Law Serv. at 1245 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0833).

108. *Id.* § 1.08, 1991 Tex. Sess. Law Serv. at 1244 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0831).

109. *Id.* § 1.10, 1991 Tex. Sess. Law Serv. at 1246 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.084(c)).

110. *Id.*

111. Waste Policy Act, *supra* note 95, § 1.10, 1991 Tex. Sess. Law Serv. at 1246 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.089(e)).

112. *Id.* § 1.07, 1991 Tex. Sess. Law Serv. at 1243-44 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.082).

113. *Id.* § 1.12, 1991 Tex. Sess. Law Serv. at 1247 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.085(a)).

114. *Id.*

115. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.085(b)).

sion may require.¹¹⁶

During the permitting process, the Commission is required to assess the impact of proposed hazardous waste management facilities on local land use in the area.¹¹⁷ In determining whether a new facility is compatible with local land use, the Commission shall consider: (1) the location of industrial and other waste generating facilities in the area, (2) the amounts of hazardous waste generated by those facilities, and (3) the risks associated with the transportation of hazardous waste to the facility.¹¹⁸ Denial of the permit is appropriate when the commission determines that a proposed application is not compatible with local land use.¹¹⁹ The Commission, when evaluating an application, must evaluate the need for the specific technology proposed in the facility to manage new or increased volumes of wastes generated in the state.¹²⁰ Commission rules must identify the types of technology for which a commercial waste management need exists. The Commission is to give consideration in permit processing for those applications that address the need identified as most pressing.¹²¹

The Act provides a general prohibition on permitting for hazardous waste landfill in floodplain.¹²² An exception is allowed for an "areal expansion of a landfill in a 100-year floodplain if it can be demonstrated . . . that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event."¹²³ A similar exception is provided for a new hazardous waste disposal unit.¹²⁴ The burden of proof for establishing the exception is on the applicant.¹²⁵ An applicant may not rely solely on Federal Emergency Management Agency floodplain maps to determine whether an affected unit is subject to such an inundation.¹²⁶

The Act contains restrictions on facilities whose proposed location is near geologic fault lines.¹²⁷ The burden of proof is on the applicant to show that the fault is not of a type which allows migration of hazardous constituents, that no faults pass near where treatment, storage, or disposal of hazardous

116. Waste Policy Act, *supra* note 95, § 1.13, 1991 Tex. Sess. Law Serv. at 1248 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.0871(a)).

117. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.0871(b)).

118. *Id.*

119. *Id.*

120. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.0871(c)).

121. Waste Policy Act, *supra* note 95, § 1.13, 1991 Tex. Sess. Law Serv. at 1248 (to be codified as an amendment TEX. HEALTH & SAFETY CODE ANN. § 361.0871(c)).

122. *Id.* § 1.15, 1991 Tex. Sess. Law Serv. at 1248-49 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.098).

123. *Id.* § 1.15, 1991 Tex. Sess. Law Serv. at 1248 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.098(b)).

124. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.098(c)).

125. *Id.* § 1.15, 1991 Tex. Sess. Law Serv. at 1248-49 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.098(d)).

126. Waste Policy Act, *supra* note 95, § 1.15, 1991 Tex. Sess. Law Serv. at 1248-49 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.098(d)).

127. *Id.* § 1.16, 1991 Tex. Sess. Law Serv. at 1249 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.1011).

wastes will occur, and the fault will not result in instability to the extent that there is endangerment to human health or the environment.¹²⁸

The Act places further restrictions on siting of proposed facilities. Issuance of a permit for a new facility or the areal expansion of such a facility is prohibited if the boundary is within a specified distance of an established residence, church, school, or dedicated public park, a day-care center or surface water body used for a public drinking water supply (covered facilities).¹²⁹ Included are hazardous waste land treatment facilities, land fills and hazardous waste management facilities.¹³⁰ The applicable distances vary by type of facility.¹³¹

A subsequent areal expansion of a hazardous waste management facility is subject to this restriction only if the covered facility was in place at the time of the original permit.¹³² The issuance of a permit for a new commercial hazardous waste management facility whose proposed location is greater than the allowable distance from a covered facility is still prohibited unless the applicant demonstrates that public health and welfare are safeguarded and physical property and the environment are protected.¹³³ The measurement of distances shall be taken toward a covered facility,¹³⁴ from a perimeter around the proposed hazardous waste management unit.¹³⁵ The restrictions do not apply to covered facilities located within the commercial hazardous waste management facility's boundaries, or on property owned by the permit applicant.¹³⁶

The Act requires provision for adequate transportation and emergency response to a proposed facility if the Commission determines that a new facility will burden public roadways.¹³⁷ An applicant must then pay the cost of the improvements necessary to minimize or mitigate the burden, including roadway improvements.¹³⁸ Denial or suspension of a permit cannot be based on the failure of a county or municipality to accept the funds and

128. *Id.*

129. *Id.* § 1.17, 1991 Tex. Sess. Law Serv. at 1249 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(a)).

130. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(b)).

131. Waste Policy Act, *supra* note 95, § 1.17, 1991 Tex. Sess. Law Serv. at 1249 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(a)-(b)).

132. *Id.* § 1.17, 1991 Tex. Sess. Law Serv. at 1249-50 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(c)).

133. *Id.* § 1.17, 1991 Tex. Sess. Law Serv. at 1250 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(d)).

134. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(e)) (that is in use when the notice of intent to file a permit application is filed, or if no such notice is filed, when the permit application is filed with the Commission).

135. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(e)-(f)). The perimeter must be no more than 75 feet from the edge of the proposed unit. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(f)).

136. Waste Policy Act, *supra* note 95, § 1.17, 1991 Tex. Sess. Law Serv. at 1250 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.102(e)).

137. *Id.* § 1.18, 1991 Tex. Sess. Law Serv. at 1250 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.109(b)).

138. *Id.*

make the improvements.¹³⁹ Processing a permit application requires proof of emergency response capabilities sufficient to manage a reasonable worst-case emergency or bonding sufficient to fund the emergency response personnel and equipment necessary to manage a reasonable worst-case emergency condition.¹⁴⁰

If the applicant intends to rely on emergency response facilities other than those of the county or municipality in which the facility is located, the applicant must provide its own facilities or contract for them separately.¹⁴¹ In addition, the Commission is given authority to adopt rules ensuring that the local governmental entity has sufficient emergency response capabilities before the facility first receives waste.¹⁴² The applicant must also provide a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed before the Commission can grant a permit.¹⁴³ Lack of experience of the applicant may not provide the sole reason for permit denial.¹⁴⁴

The Act requires the Commission to establish monitoring rules.¹⁴⁵ In formulating these rules, the Commission is required to consider mandating: an independent inspector for the facility, funded by the facility owner or operator; independent annual environmental facility audits allowing consideration of the comments of affected parties on the selection of the independent inspector; requiring that the facility's operational personnel be certified by the state as competent; and having the facility provide for fence line and ambient air quality monitoring.¹⁴⁶ Any such rules established by the Commission will apply to new permits when issued and existing permits when renewed.¹⁴⁷

The use of salt domes for disposal is also restricted. Permit issuance for a hazardous waste injection well into dome caverns is prohibited until the United States Environmental Protection Agency and the Commission determine sufficient regulations.¹⁴⁸ Before issuing a salt dome injection well per-

139. *Id.*

140. *Id.* § 1.17, 1991 Tex. Sess. Law Serv. at 1250-51 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.109(c)). The bond must be for the benefit of the municipal or county government of the site, with payment provided before the facility first receives waste, subject to the limitation that the money can be spent only for emergency response personnel and equipment. *Id.* § 1.17, 1991 Tex. Sess. Law Serv. at 1251 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.109(d)).

141. Waste Policy Act, *supra* note 95, § 1.17, 1991 Tex. Sess. Law Serv. at 1250 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.109(d)).

142. *Id.*

143. *Id.* (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.109(e)). Any applicant without experience in the particular hazardous waste management technology must state that lack of experience conspicuously.

144. *Id.*

145. *Id.* § 1.19, 1991 Tex. Sess. Law Serv. at 1251 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.113(a)).

146. Waste Policy Act, *supra* note 95, § 1.19, 1991 Tex. Sess. Law Serv. at 1251 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.113(b)).

147. *Id.* (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.113(c)).

148. *Id.* § 1.20, 1991 Tex. Sess. Law Serv. at 1251 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.114(a)).

mit, the Commission must find an urgent public necessity for the well.¹⁴⁹ Such a finding requires: (1) the injection well's design, construction, and operation provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies; (2) a substantial or obvious public need for additional disposal capacity toward which the well contributes additional capacity, consistent with the goal of managing within the state hazardous wastes generated in the state; (3) the well's operation safeguards public health and welfare and protect physical property and the environment; (4) demonstration that groundwater and surface waters will be protected from the release of hazardous waste from the salt dome waste containment cavern; and (5) any other criteria required by the Commission.¹⁵⁰

A moratorium is imposed on final action on any permit application, renewals, or amendments until the Commission adopts the rules required by the Act.¹⁵¹ The Commission is to adopt all the rules required as expeditiously as possible, but no later than 120 days after the effective date of the Act.¹⁵² Until adoption of the required rules,¹⁵³ the Commission is not to conduct any public hearing on a permit although routine processing of new or pending application is allowed.¹⁵⁴ Permits granted after the effective date of the Act must comply fully with all rules the Commission adopts required by the Act.¹⁵⁵ The moratorium only applies to permits for commercial hazardous waste management facilities, including those that burn waste-derived fuel, but excluding facilities that only store or recycle hazardous waste.¹⁵⁶ This moratorium does not apply to permit renewals or amendments for existing facilities that do not include a request to increase disposal capacity.¹⁵⁷

The Commission is required to review its permit application processing procedures to determine the causes of delay, if any, in those activities.¹⁵⁸ Once the causes are identified, the Commission must adopt reasonable permit processing and hearing timetables with specific deadlines for each major step.¹⁵⁹ Time spent waiting for the receipt of information from the applicant in order to properly review the application is not to be included in the deadlines.¹⁶⁰

As part of this study, the Commission shall encourage applicants and local communities to cooperate with each other in the siting of new hazardous

149. *Id.* § 1.20, 1991 Tex. Sess. Law Serv. at 1251-52 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.114(b)).

150. *Id.*

151. Waste Policy Act, *supra* note 95, § 1.24, 1991 Tex. Sess. Law Serv. at 1253. An exception is provided for the rules required under § 1.02 (need assessments) and § 1.26 (obstacles to permitting).

152. *Id.* § 1.24, 1991 Tex. Sess. Law Serv. at 1253.

153. The Commission adopted the new rules on October 2, 1991. See Tex. Water Comm'n, 16 Tex. Reg. 4208 (1991) (final rules published in November).

154. Waste Policy Act, *supra* note 95, § 1.24, 1991 Tex. Sess. Law Serv. at 1253.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* § 1.26(a), 1991 Tex. Sess. Law Serv. at 1254.

159. Waste Policy Act, *supra* note 95, § 1.26(a), 1991 Tex. Sess. Law Serv. at 1254.

160. *Id.*

waste management facilities.¹⁶¹ Possible mechanisms for fostering such cooperation include an arbitration and negotiation process for resolving non-technical issues and a technical review process providing opportunities for citizens to ask questions about the permit application or the draft permit.¹⁶²

Once the hearing is complete the examiner will make findings of fact, conclusions of law, and a proposal for decision.¹⁶³ The Commission will act on the proposal in a timely manner.¹⁶⁴ Provisions are also made for appeal and reversal of the findings and proposal of the examiner.¹⁶⁵

3. Hazardous Waste Reduction

Article 2 of the Act sets out a policy of reducing and minimizing pollution impact with the primary goal of source reduction.¹⁶⁶ To achieve the goal a variety of actions is required. The Commission, the TDH, the TACB, and the Railroad Commission of Texas must appoint a person to coordinate pollution programs in their respective agencies.¹⁶⁷ These persons will also serve on the pollution prevention council.¹⁶⁸ In addition, the office of pollution prevention is created in the executive office of the Commission to direct and coordinate the pollution control activities of the Commission.¹⁶⁹ By January 1, 1992, the Commission and the TACB must jointly adopt requirements for source reduction and waste minimization plans.¹⁷⁰ The requirements must include initial source reduction and waste minimization annual reports.¹⁷¹ The Commission or the TACB are to establish the timing of the reports.¹⁷² Any increase in costs experienced by the Commission, the TACB, or the TDH in implementing the required application procedures article, may be covered by increasing application fees and allocating those fees to the appropriate agency.¹⁷³

B. Hazardous Waste Definition and Fees

In response to a mandate from the Seventy-first Texas Legislature, the Commission conducted an interim study of its hazardous waste fee structure

161. *Id.* § 1.26(b), 1991 Tex. Sess. Law Serv. at 1254.

162. *Id.*

163. *Id.* § 1.08, 1991 Tex. Sess. Law Serv. at 1244 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0832(a)).

164. Waste Policy Act, *supra* note 95, § 1.08, 1991 Tex. Sess. Law Serv. at 1244 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0832(b)).

165. *Id.* (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0832(c)-(f)).

166. *Id.* § 2.01, 1991 Tex. Sess. Law Serv. at 1255 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.432).

167. *Id.* § 2.03, 1991 Tex. Sess. Law Serv. at 1260 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0211(a)).

168. *Id.*

169. Waste Policy Act, *supra* note 95, § 2.05, 1991 Tex. Sess. Law Serv. at 1260-61 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.0216).

170. *Id.* § 2.07, 1991 Tex. Sess. Law Serv. at 1261.

171. *Id.* § 2.08, 1991 Tex. Sess. Law Serv. at 1261. The classes of persons subject to this annual report requirement are identified in TEX. HEALTH & SAFETY CODE ANN. § 361.436 (added by the Act).

172. Waste Policy Act, *supra* note 95, § 2.08, 1991 Tex. Sess. Law Serv. at 1261.

173. *Id.* § 2.10, 1991 Tex. Sess. Law Serv. at 1261.

with a view toward revising it to more accurately reflect actual waste generation patterns, as well as current state and federal policy.¹⁷⁴ House Bill 1986¹⁷⁵ was the result of that interim study. The Bill imposes a new fee on hazardous waste, noncommercial waste storage, processing and disposal facilities, and permit applications.¹⁷⁶ The fees will be implemented through rule changes by the Commission, and are designed to help minimize waste or require recycling.¹⁷⁷ The fee structure is designed to charge the highest fees for large quantity generators of the most hazardous wastes. In addition, this Bill establishes a new retail assessment on batteries and requires recycling of old batteries.¹⁷⁸

The legislature altered the statutory definition of hazardous waste to bring the state definition¹⁷⁹ into line with the revised federal definition.¹⁸⁰ This Bill deletes current statutory references to hazardous wastes "as of August 26, 1985."¹⁸¹ The Commission is authorized to assess fees based on the Toxicity Characteristic Leachate Procedure on Toxic Constituency¹⁸² pursuant to federal regulations.¹⁸³ The bill also covers other industrial wastes which are nonhazardous.¹⁸⁴

C. Hazardous and Solid Waste Reduction

House Bill 1022¹⁸⁵ amends the Texas Health and Safety Code to include as the State's goal the elimination of municipal solid waste, municipal sludge, and hazardous waste to the maximum extent that is technologically and economically feasible.¹⁸⁶ Source reduction and waste minimization are the methods most preferred for the management of municipal solid waste and municipal sludge, and source reduction is the preferred method for hazardous waste.¹⁸⁷

174. Acts of June 16, 1989, ch. 1144, 1989 Tex. Gen. Laws 4726 and Tex. S. Con. Res. 106, 71st Leg., R.S., 1989 Tex. Gen. Laws 5893.

175. Act of August 26, 1991, 72d Leg., R.S., ch. 710, 1991 Tex. Sess. Law Serv. 2538 (Vernon) (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. §§ 361.131-.140).

176. *Id.* § 4, 1991 Tex. Sess. Law Serv. at 2540 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.132)

177. *Id.*

178. *Id.* § 11, 1991 Tex. Sess. Law Serv. at 2546 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.138).

179. Act of June 16, 1991, 72d Leg., R.S., ch. 692, 1991 Tex. Sess. Law Serv. 2494 (Vernon) (effective Aug. 26, 1991) [hereinafter House Bill 1421].

180. 40 C.F.R. § 261.3 (1991). *See also*, Wynne & Hamby, *supra* note 93, at 10.

181. House Bill 1421, *supra* note 179, § 1, 1991 Tex. Sess. Law Serv. at 2494.

182. 40 C.F.R. § 261, app. II (1991).

183. House Bill 1421, *supra* note 179, § 1, 1991 Tex. Sess. Law Serv. at 2494.

184. *Id.*

185. Act of May 21, 1991, 72d Leg., R.S., ch. 231, 1991 Tex. Sess. Law Serv. 910 (Vernon) (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. §§ 361.022(a)-(c), 361.023(a)) (effective Sept. 1, 1991).

186. *Id.* § 2, 1991 Tex. Sess. Law Serv. at 911 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.023(a)).

187. *Id.* §§ 1-2, 1991 Tex. Sess. Law Serv. at 910 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.022-.023).

Senate Bill 830¹⁸⁸ is intended to help reduce the generation of waste. The Bill (1) requires the Commission and the TACB to develop plans and to establish goals for the reduction of hazardous substances where economically possible;¹⁸⁹ (2) directs the Commission to establish guidelines for preparation by generators of Pollution Prevention Plans and gives the Commission minimum requirements for those plans;¹⁹⁰ and (3) directs the Commission waste minimization and reduction group to assist generators of hazardous waste in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated in the state.¹⁹¹

D. Waste Recycling Programs and Incentives

Senate Bill 1340¹⁹² creates new recycling programs and incentives, and sets a recycling goal of forty percent for municipal wastes.¹⁹³ It established a Recycling Market Development Study and implementation program,¹⁹⁴ a governmental entity preference for recycled products,¹⁹⁵ a yard waste composting program,¹⁹⁶ a newspaper recycling fee,¹⁹⁷ a lead-acid battery recycling program,¹⁹⁸ and a used oil recycling program.¹⁹⁹ The Bill also requires regional plans to incorporate recycling,²⁰⁰ and establishes an environmental education program,²⁰¹ and programs for use of reclaimed asphalt paving and rubberized asphalt.²⁰² House Bill 847²⁰³ creates a tire recycling program by assessing a fee on the purchase of new tires. The fee will subsi-

188. Act of May 25, 1991, 72d Leg., R.S., ch. 590, 1991 Tex. Sess. Law Serv. 2120 (Vernon) (effective June 15, 1991).

189. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 2121 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.432).

190. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 2122 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.435).

191. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 2124 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.439).

192. Act of May 26, 1991, 72d Leg., R.S., ch. 303, 1991 Tex. Sess. Law Serv. 1267 (Vernon) (effective Sept. 1, 1991) [hereinafter Senate Bill 1340].

193. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1268 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.422).

194. *Id.* (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.423).

195. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1270 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.426).

196. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1270-71 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.430).

197. Senate Bill 1340, *supra* note 192, § 1, 1991 Tex. Sess. Law Serv. at 1271-72 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.430).

198. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1272-73 (to be codified at TEX. HEALTH & SAFETY CODE ANN. §§ 361.451-456).

199. *Id.* § 8, 1991 Tex. Sess. Law Serv. at 1279-84 (to be codified at TEX. HEALTH & SAFETY CODE ANN. §§ 371.001-.061).

200. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1269-70 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.425).

201. *Id.* § 10, 1991 Tex. Sess. Law Serv. at 1284-85 (to be codified at TEX. EDUC. CODE ANN. § 11.53).

202. Senate Bill 1340, *supra* note 192, § 15-16, 1991 Tex. Sess. Law Serv. at 1286-87 (to be codified at TEX. REV. CIV. STAT. ANN. art. 6674i-2, 6674i-3 and art. 601b §§ 3.211-212).

203. Act of May 14, 1991, 72d Leg., R.S., ch. 370, § 1, 1991 Tex. Sess. Law Serv. at 1420 (Vernon) (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.432) (effective Sept. 1, 1991).

dize certain tire recycling operations in Texas.²⁰⁴

E. Miscellaneous Hazardous and Solid Waste Legislation

House Bill 1763²⁰⁵ modifies the Texas Health and Safety Code to allow for the disposal of metal shredding residue in municipal landfills without the need for authorization from the TDH or concurrence from the Commission, provided that the generator certifies that the waste is nonhazardous on an appropriate Commission form.²⁰⁶ House Bill 1444²⁰⁷ prohibits the transportation of wastes generated in a foreign country into Texas except for recycling, reuse, feedstock, or to a generator-owned facility.²⁰⁸ House Bill 1762²⁰⁹ provides indemnification to state employees and contractors when signing manifests to ship waste in performance of their jobs or contractual obligations if the person signing the manifests did not increase or aggravate the circumstances of contamination by willful or negligent misconduct.²¹⁰

IV. MISCELLANEOUS ACTS

A. Water Quality Planning and Coordination

Senate Bill 818²¹¹ provides for water quality programs by river authorities²¹² and requires the Commission to work toward issuing all basin discharge permits simultaneously.²¹³ The Commission is required to work with a variety of local governments, primarily river authorities, to develop basin-wide pollution prevention standards.²¹⁴ Although the emphasis is on nonpoint source pollution, the new requirement to issue all the point source permits simultaneously should lead to a more holistic view of discharges in a given basin. Fees assessed against retail water suppliers and water rights holders will fund the program.²¹⁵

204. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1421-22 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.435-437).

205. Act of May 25, 1991, 72d Leg., R.S., ch. 703, 1991 Tex. Sess. Law Serv. 2510 (Vernon).

206. *Id.* § 2, at 2513 (to be codified as an amendment to TEX. HEALTH & SAFETY CODE ANN. § 361.019).

207. Act of May 14, 1991, 72d Leg., R.S., ch. 336, 1991 Tex. Sess. Law Serv. 1383 (Vernon).

208. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1383 (to be codified at TEX. HEALTH & SAFETY CODE ANN. § 361.0232(a)).

209. Act of May 25, 1991, 72d Leg., R.S., ch. 702, 1991 Tex. Sess. Law Serv. 2509 (Vernon).

210. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 2509 (to be codified as an amendment to TEX. CIV. PROC. & REM. CODE ANN. § 104.002(b)).

211. Act of May 27, 1991, 72d Leg., R.S., ch. 294, 1991 Tex. Sess. Law Serv. 1215 (Vernon).

212. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1215 (to be codified at TEX. WATER CODE ANN. § 26.0135(a)).

213. *Id.* § 4, 1991 Tex. Sess. Law Serv. at 1217 (to be codified at TEX. WATER CODE ANN. § 26.0285).

214. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 1215 (to be codified at TEX. WATER CODE ANN. § 26.0135(b)).

215. *Id.*, 1991 Tex. Sess. Law Serv. at 1216 (to be codified at TEX. WATER CODE ANN. § 26.0135(h)).

B. Oil Spill Response

Senate Bill 14²¹⁶ creates a \$25,000,000 fund for coastal oil spill cleanup and prevention,²¹⁷ and transfers authority for coastal oil spills to the General Land Office.²¹⁸ The fund is created through a two cent per barrel charge on all petroleum products²¹⁹ shipped in the intercoastal waterway.²²⁰ The fund will be used to establish cleanup facilities and equipment along the Gulf coast and to pay for immediate response to all spill events.²²¹

The Bill also allows the General Land Office to require spill prevention and spill response plans of all facilities and vessels that operate in Texas waters.²²² Plans that meet the new federal standards will also meet the new state standards.²²³ The General Land Office is currently producing the necessary rules to implement this new program.

C. Wetlands Protection and Coastal Zone Management

Senate Bill 1054²²⁴ directs the General Land Office and the Texas Parks and Wildlife Department to promulgate a plan protecting and enhancing coastal wetlands that are owned by state agencies and local governments. The plan's basis is the President's policy of "no net loss" of wetlands.²²⁵ The Bill also amends existing Chapter 33 of the Texas Natural Resources Code to bring the definition of "wetlands" into conformity with other statutes.²²⁶

Senate Bill 1053²²⁷ establishes the General Land Office as the lead agency for administration of the Open Beaches Act. The attorney general's office retains full enforcement powers and enforcement discretion.²²⁸ The General Land Office is authorized to promulgate rules for construction on or adja-

216. Oil Spill Prevention and Response Act of 1991, 72d Leg., R.S., ch. 10, 1991 Tex. Sess. Law Serv. 13 (Vernon) (to be codified at TEX. NAT. RES. CODE ANN. ch. 40) [hereinafter Oil Spill Act].

217. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 23 (to be codified at TEX. NAT. RES. CODE ANN. § 40.151).

218. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 16 (to be codified at TEX. NAT. RES. CODE ANN. § 40.004).

219. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 24 (to be codified at TEX. NAT. RES. CODE ANN. § 40.155).

220. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 24 (to be codified at TEX. NAT. RES. CODE ANN. § 40.154(a)).

221. Oil Spill Act, *supra* note 216, § 1, 1991 Tex. Sess. Law Serv. at 23 (to be codified at TEX. NAT. RES. CODE ANN. § 40.152).

222. *Id.* § 1, 1991 Tex. Sess. Law Serv. at 20-21 (to be codified at TEX. NAT. RES. CODE ANN. §§ 40.109, 40.114).

223. *Id.*

224. Coastal Management Plan for State-Owned Coastal Wetlands, 72d Leg., R.S., ch. 265, 1991 Tex. Sess. Law Serv. 1173 (Vernon).

225. *Id.* § 2, 1991 Tex. Sess. Law Serv. at 1173.

226. *Id.* § 4, 1991 Tex. Sess. Law Serv. at 1175 (to be codified as an amendment to TEX. NAT. RES. CODE ANN. § 33.233).

227. Coastal Management Plan for Beach Access Preservation and Enhancement, Dune Protection, and Coastal Erosion, 72d Leg., R.S., ch. 295, 1991 Tex. Sess. Law Serv. 1220 (Vernon) [hereinafter Senate Bill 1053].

228. *Id.*, § 5, 1991 Tex. Sess. Law Serv. at 1222 (to be codified as an amendment to TEX. NAT. RES. CODE ANN. § 61.011).

cent to public beaches.²²⁹ Cities and counties are required to promulgate beach access plans designed to keep beaches open for public use.²³⁰ The plan is to be submitted to the General Land Office for determination of consistency with state minimum standards.²³¹ All construction affecting public use or access is subject to review by appropriate local government for consistency with its plan.²³²

The General Land Office is to review and comment on applications for construction.²³³ Construction not consistent with the plan would be a violation of the Open Beaches Act.²³⁴ The General Land Office would develop rules on beach fees and prohibitions against vehicles on public beaches imposed by local governments.²³⁵ Local governments wishing to charge fees or close beaches to vehicular access would have to meet minimum state standards.²³⁶ Senate Bill 1053 also authorizes the General Land Office to set standards for flood protection on barrier islands and establish a program for certification of structures in danger of collapse due to erosion under the Upton-Jones amendment to the National Flood Insurance Act.²³⁷ This would result in the demolition or relocation of structures that come into violation of the Open Beaches Act.²³⁸

D. *Environmental Impact of Highway Construction*

Senate Bill 981²³⁹ relates to mitigation of adverse environmental impacts from the construction or maintenance of state highways. The Bill permits the use of state highway funds for reducing environmental effects of construction.²⁴⁰ Other provisions affect acquisition of land for highway department use.²⁴¹

E. *Petroleum Storage Tank Remediation*

House Bill 1214²⁴² amends the criteria for eligibility and the amount of

229. *Id.*, § 5, 1991 Tex. Sess. Law Serv. at 1223 (to be codified as an amendment to TEX. NAT. RES. CODE ANN. § 61.011(d)(6)).

230. *Id.*, § 8, 1991 Tex. Sess. Law Serv. at 1224 (to be codified as an amendment to TEX. NAT. RES. CODE ANN. § 61.015).

231. *Id.*

232. Senate Bill 1053, *supra* note 227, § 8, 1991 Tex. Sess. Law Serv. at 1225.

233. *Id.* § 8, 1991 Tex. Sess. Law Serv. at 1224.

234. *Id.* § 8, 1991 Tex. Sess. Law Serv. at 1225.

235. *Id.* § 5, 1991 Tex. Sess. Law Serv. at 1223 (to be codified as an amendment to TEX. NAT. RES. CODE ANN. § 61.011).

236. *Id.* § 5, 1991 Tex. Sess. Law Serv. at 1222.

237. Senate Bill 1053, *supra* note 227, §§ 38-39, 1991 Tex. Sess. Law Serv. at 1234 (to be codified at TEX. WATER CODE ANN. §§ 16.320-.321).

238. *Id.*

239. Act of June 13, 1991, 72d Leg., R.S., ch. 492, 1991 Tex. Sess. Law Serv. 1731 (Vernon).

240. *Id.* § 2, 1991 Tex. Sess. Law Serv. at 1732 (to be codified as an amendment to TEX. REV. CIV. STAT. ANN. art. 6674e, § 5).

241. *Id.* § 3, 1991 Tex. Sess. Law Serv. at 1732-34 (to be codified as an amendment to TEX. REV. CIV. STAT. ANN. art. 6674w-3, § 4).

242. Act of June 16, 1991, 72d Leg., R.S., ch. 905, 1991 Tex. Sess. Law Serv. 3240 (Vernon).

the deductible for reimbursement claims from the Petroleum Storage Tank Remediation Fund. The Bill shifts the effective date for reimbursement eligibility from May 31, 1989 to September 31, 1987 (the date of the inception of the storage tank program at the Commission).²⁴³ The Bill allows the use of a sliding scale for the deductible in lieu of the flat \$10,000 deductible now in effect.²⁴⁴

F. Ethics Bill

Senate Bill 1 (Ethics Bill),²⁴⁵ makes two changes significant to the practice of administrative and environmental law in Texas. First, anyone who communicates directly with a member of the executive branch on behalf of a client or company to influence administrative action must register as a lobbyist.²⁴⁶ This provision potentially affects literally thousands of engineers, chemists, biologists and attorneys who do business with the environmental agencies on a daily basis.²⁴⁷ Exemptions to the registration provision include the attorney of record in a contested case who enters an appearance in a public record²⁴⁸ or any person whose only contact is testimony in a public meeting.²⁴⁹

A second major effect of the Ethics Bill involves the new "revolving door" provisions that apply to state agencies. It is now illegal for former state employees to attempt to influence the actions of an agency for which they previously worked.²⁵⁰ For members of the governing body, or the executive head of the agency, the prohibition extends to any communication or appearance made with the intent to influence prior to the second anniversary of their departure.²⁵¹ Note there is not a requirement that the communication be on behalf of a client or for compensation. For other state employees, group 17²⁵² or higher, the two year prohibition only applies to a particular

243. *Id.*, § 7(b), 1991 Tex. Sess. Law Serv. at 3245.

244. *Id.*, § 2(b), 1991 Tex. Sess. Law Serv. at 3241-42 (to be codified as an amendment to TEX. WATER CODE ANN. § 26.3512).

245. Ethics Bill, 72d Leg., R.S., ch. 304, 1991 Tex. Sess. Law Serv. 1290 (Vernon) ("Relating to the composition, powers, and duties of the Texas Elections and Ethics Commission; to registration, reporting and restrictions concerning expenditures made to influence legislation or administrative action; to personal financial statements filed by public officers and employees; to the giving or acceptance of certain benefits; to restrictions and reporting concerning political contributions and expenditures; and provision penalties.") (effective Jan. 1, 1992) [hereinafter Ethics Bill].

246. *Id.* § 2.03(b), 1991 Tex. Sess. Law Serv. at 1305.

247. Note that the registration provision is not limited to the environmental agencies, but applies to all agencies of the legislative or executive branch. *Id.* § 2.03(b), 1991 Tex. Sess. Law Serv. at 1305.

248. *Id.* § 2.03(c), 1991 Tex. Sess. Law Serv. at 1305.

249. *Id.* § 2.04, 1991 Tex. Sess. Law Serv. at 1305 (to be codified as an amendment to TEX. GOV'T CODE ANN. § 305.004).

250. Ethics Bill, *supra* note 245, § 3.07, 1991 Tex. Sess. Law Serv. at 1319 (to be codified at TEX. REV. CIV. STAT. ANN. art. 6252-9b, § 7A(a)).

251. *Id.*

252. "Group 17" refers to the state employee classification plan set out in the appropriations bill (Act of Aug. 30, 1991, 72d Leg., 1st C.S., ch. 19, 1991 Tex. Sess. Law Serv. 365 (Vernon)) and reflects the level of compensation paid.

matter in which the employees participated.²⁵³ Furthermore, there is a specific grandfather clause stating that this section does not apply to a person who leaves state employment prior to January 1, 1992. Violations are Class A misdemeanors.²⁵⁴

There are two sections of the ethics bill that deserve further scrutiny — the provision for other “revolving door” statutes, and the definitions of “participated” and “particular matter.” The new subsection (d) of Section 7A-C specifically provides that any other law restricting representation before a particular agency prevails over this general law.²⁵⁵ Four agencies already have post-employment restrictions: the Public Utility Commission,²⁵⁶ the Texas Racing Commission,²⁵⁷ the TACB and the Commission.²⁵⁸ While both the Public Utility and Racing Commission’s enabling acts contain post-employment restrictions, the TACB and the Commission provisions simply require denial of a permit where the permittee is represented by a former employee who worked on that permit while at the TACB or Commission.²⁵⁹ The differences would indicate that the new “revolving door” provisions of the ethics bill do not apply at all to the Public Utility and Racing Commissions, but would apply to matters, other than permits, at the TACB and the Commission.

The definitions used in the ethics bill do not exactly track the language used in the Texas Disciplinary Rules of Professional Conduct.²⁶⁰ However, the terms “substantially participated” in a “particular matter” are similar enough to “personal and substantial involvement” to suggest the intent was the same. In addition to being barred from representation by having participated in a matter before the agency, a state employee may also be barred if the matter fell within that employee’s official responsibility,²⁶¹ which goes well beyond the Texas Disciplinary Rules.

V. CONCLUSION

This Article represents only a portion of the environmental legislation filed and passed during the Seventy-second Legislature. This incredible

253. Ethics Bill, *supra* note 245, § 3.07, 1991 Tex. Sess. Law Serv. at 1319 (to be codified as an amendment to TEX. REV. CIV. STAT. ANN. art. 6252-9b § 7A(c)(2)).

254. *Id.* (to be codified as an amendment to TEX. REV. CIV. STAT. ANN. art. 6252-9b § 7A(b)).

255. *Id.* (to be codified as an amendment to TEX. REV. CIV. STAT. ANN. art. 6252-9b § 7A(d)).

256. TEX. REV. CIV. STAT. ANN. art. 1445c, § 6 (Vernon Supp. 1991).

257. TEX. REV. CIV. STAT. ANN. art. 179e, § 6.16 (Vernon Supp. 1991).

258. See Act of June 16, 1989, 71st Leg., R.S., ch. 1175, 1989 Tex. Gen. Laws 4807.

259. See TEX. REV. CIV. STAT. ANN. art. 44777-5, § 3.282 (Vernon Supp. 1991) (Texas Clean Air Act permits); TEX. WATER CODE ANN. § 26,0283 (Vernon Supp. 1991) (water quality permits); and TEX. REV. CIV. STAT. ANN. art. 4477-7, § 4(e)(14) (Vernon Supp. 1991) (solid waste disposal permits).

260. SUPREME COURT OF TEXAS, STATE BAR RULES art. X, § 9 (Texas Disciplinary Rule of Profession Conduct) Rule 1.10 (1989) (located in the pocket part for Volume 3 of the Texas Government Code in title 2, subtitle G app., following § 83.006 of the Government Code).

261. Ethics Bill, *supra* note 245, § 3.07, 1991 Tex. Sess. Law Serv. at 1319 (to be codified as an amendment to TEX. REV. CIV. STAT. ANN. art. 6252-9b § 7A(b)).

flurry of activity certainly proves true President Bush's declaration that the 1990s will be the Decade of the Environment. The repercussions from the legislation that passed will continue well into the decade. There will undoubtedly be more bills and amendments filed during the Seventy-third Legislature to help clarify and rectify changes made during the Seventy-second Legislature. The administrative rule changes have only begun, and after the first set of rules are promulgated they too will undoubtedly be amended. The interpretations of the law, both in administrative hearings and in courts, will carry on for years to come. Passing legislation is only the first step in a long journey, and it is up to the administrators to properly apply the law. In fact, the most difficult part of passing any bill falls on the executive agencies: implementing the changes in the law, the rules, and the policy after the legislators have finished their jobs and gone home.

