

## House Bill 125: Regulatory Transparency Is Basic Good Governance

by Kathleen Hartnett White, Distinguished Fellow-in-Residence and  
Director, Armstrong Center for Energy and the Environment

**R**egulatory transparency should join fiscal transparency as a fundamental principle of prudent governance in Texas. Our state already benefits from strong fiscal transparency measures—full disclosure of state revenues and expenditures. Texans equally deserve regulatory transparency—full disclosure of the costs and anticipated effects of regulation established by state rules.

Regulatory transparency is particularly needed in environmental regulations, the most rapidly expanding area of federal and state regulation. Assessment of financial costs and environmental effectiveness should be a more clearly required component of rulemaking at the Texas Commission on Environmental Quality (TCEQ). HB 125, introduced by Representative Ken Legler, would provide this needed regulatory transparency by requiring a simple, concrete regulatory impact analysis (RIA) of rules promulgated by the TCEQ.

### Background: Regulatory Impact Analysis of Cost and Effectiveness

The federal government and many states have required RIAs, in various forms, since the early 1980s. Under the federal Clean Air Act, other statutes and executive orders, EPA must conduct an economic impact analysis or a cost-benefit analysis for rules. Unlike EPA and other states, TCEQ's rules have never had a clear requirement to include an assessment of

economic impact on the regulated entities and the public. The Texas Administrative Procedures Act, which govern all state rulemaking, requires an assessment of fiscal implications for state and local government but not for the private sector. The General Government Code “Regulatory Analysis of Major Environmental Rules” (Section 2001.0225) does require this analysis of cost to the private sector for a limited number of “major” rules. For 14 years, TCEQ has avoided this analysis for all rules, with just one exception.

HB 125 would amend the law to clarify applicability and to streamline requirements. The bill requires a simple three-step analysis of all TCEQ rules: 1) identification of the problem the rule is intended to address; 2) estimate of the rule's environmental effectiveness such as anticipated numeric reduction of pollutants; and 3) estimate of financial cost of compliance on regulated entities and consumers. The amendments need not increase administrative costs nor preclude adoption of otherwise authorized rules. Properly conducted cost-effectiveness analyses can reduce cost to the state and private sector while maximizing environmental effectiveness. Plain common sense and good governance demand that the costs and anticipated environmental outcomes of TCEQ's regulation be more transparent to the general public and regulated entities.

Federal and state environmental regulations affect every moment of daily life and all goods and services. The number,

*continued on back*

### What HB 125 does and doesn't do:

- The required regulatory analysis does not apply to permitting, but only to rulemaking. Agency promulgation of rules and issuance of permitting are two entirely separate legal processes.
- The purpose of these simple requirements—to estimate costs and effectiveness of proposed rules—is to save the state and private sector money while assuring genuine environmental effectiveness of rules.
- TCEQ already collects economic data on many proposed rules. Formalizing requirements for a cost-benefit analysis is not a major addition to existing procedures.
- Proposed changes do not prevent adoption of any rules otherwise authorized—whatever the cost.

scope, and cost of environmental regulations have dramatically increased in the last 20 years. TCEQ now implements and enforces roughly 6,000 rules, the majority of which are dictated by federal law. Although multiple benefits to health, safety, and the environment may flow from these rules, there is no accessible mechanism for tracking the cost and effectiveness. Unlike the state budget, which tracks direct spending supported by taxes and fees, the costs and results of the growing edifice of environmental regulation remain nebulous.

## Goal of Regulatory Analysis of Cost and Benefits

As a required step in rulemaking, straightforward regulatory impact analysis helps regulators design the most efficient regulation. Analysis which concludes extremely high cost with minimal environmental effect should send the rule maker back to the drawing board to craft a more efficient rule. Alternative definitions of standards, requirements, and methods of compliance often can yield greater measurable benefit at lower cost.

## Current Law Needs Amendment to Clarify Scope and Simplify Analysis

HB 125 extends the requirement in existing law to all TCEQ rules. Existing General Government Code Section 2001.0225 limits the required regulatory analysis to only those rules the law defines as “major.” The existing criteria for “major” rules has been interpreted to exclude all TCEQ rules but one in the last 14 years. Existing law stipulates a complex impact analysis with 10 steps. The proposed amendment to HB 125 eliminates

seven of these ten steps. Reducing the steps of the analysis will ease administrative burden while strengthening the core of the analysis.

With over 80 steps in TCEQ’s internal rulemaking process, HB 125’s straightforward cost-effectiveness analysis of all rules need not add time or expense to the agency’s work. Although TCEQ has to date avoided performing regulatory impact analysis under current law (with just one exception in 14 years), it often demonstrates that the agency is able to determine how much new regulation will cost. In a particularly onerous state rule making in 2007 to meet the federal ozone standard in the Dallas-Fort Worth area, TCEQ estimated a cost to regulated entities of \$225 million to \$350.6 million for the first five years and \$9.6 million for all governmental entities.

By whatever label—cost-benefit analysis, cost-effectiveness analysis, or economic impact analysis—regulatory analysis is a widely accepted step in the rulemaking process. Such analysis may help legislative oversight of agency implementation of state law. With the amendments of HB 125 to clarify and streamline, the Regulatory Analysis of Environmental Rule provisions of existing Texas law will provide a sound yardstick.

More prudent rulemaking will save state agency expenditures and reduce the cost to Texans and regulated industries, while maximizing measurable environmental benefits from the thousands of environmental rules under which Texans live. Regulatory transparency is good governance. ★

### Proposed Amendment to General Government Code 2001.0225

- Abbreviates, streamlines and strengthens required regulatory analysis of TCEQ rules.
- Extends required analysis to all rules proposed by TCEQ instead of limiting to rules defined as “major” under existing law.
- Streamlines the minimally required analysis to three steps: (1) identification of the problem the rule is intended to address; (2) explanation of the anticipated effectiveness of the rule to resolve the problem; and (3) estimate of financial costs on regulated entities, consumers and state and local governments resulting from compliance with the rule.

- Clarifies that the anticipated environmental effectiveness must include a reasonable estimate of the projected numeric reduction of pollutants affecting air, water and soil and the reduction in associated health and ecological risks.
- Requires a separate analysis of impacts on small business. A small business is defined as any business that employs no more than 250 people.
- Makes regulatory analysis of cost-effectiveness a required component of the fiscal note under General Government Code 2001.0224.
- Requires strict compliance with analysis requirement instead the loose standard of “substantial” compliance.

