



HB 3816

Who Regulates the Regulator? Relating to the Regulatory Analysis of Rules Proposed by the Texas Commission on Environmental Quality

Testimony Before the Texas House Environmental Regulation Committee

by Kathleen Hartnett White, Director

It is time for regulatory transparency to join fiscal transparency as a principle of prudent governance. Texans already benefit from strong fiscal transparency measures—full disclosure of state revenues and expenditures.

Texans equally deserve regulatory transparency—the full disclosure of the costs and benefits of regulation created by state rules. Regulatory transparency is particularly needed in environmental regulation. Over the last 20 years, U.S. EPA has issued a vast number of environmental regulations. As a result, the Texas Commission on Environmental Quality (TCEQ) must implement or enforce almost 6,000 rules. Assessment of the financial costs and the environmental benefits should be a more clearly required component of rulemaking at TCEQ.

HB 3816 offers a straightforward solution by requiring regulatory impact analysis (RIA) of all environmental rules.

HB 3816 would extend these fiscal assessments to include regulated entities, the general public as well as state and local government. The Texas Administrative Procedures Act (TAPA), governing all state rulemaking, requires an assessment of fiscal implication to state and local government but not to the private sector—an omission unlike most other states.

The Government Code does include a section called “Regulatory Analysis of Major Environmental Rules” (Section 2001.0225) that extends the regulatory analysis of costs to the private sector. Yet, the analysis applies only if the proposed rule meets three triggers—criteria evidently never met! Not surprisingly, this section has rarely if ever been used since enacted in 1995.

HB 3816 makes it clear and simple. The regulatory impact analysis is based on cost-benefit analysis. Properly conducted cost-benefit analyses can reduce costs to the state and private sectors while maximizing environmental effectiveness. Plain common sense and good governance demand that the costs and benefits of regulation are more transparent to the general public and regulated entities.

HB 3816 wisely excludes “incidental” co-benefits—a procedural mechanism to inflate the numbers. Cost-benefit analyses can and have been manipulated in federal rules to wildly increase the benefits and downplay the costs of a proposed rule. The current administration aims to reform these prior abuses.

By whatever label—cost-benefit analysis, cost effectiveness, impact analysis—regulatory analysis is a widely accepted step in the rulemaking process. Such analysis should help in legislative oversight of agency implementation of state law. ★