AN ACT

relating to the regulation of poultry facilities and poultry litter by the State Soil and Water Conservation Board and to the enforcement authority of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.068 to read as follows:

Sec. 382.068. Poultry Facility Odor; Response to Complaints. (a) In this section, "poultry facility" and "poultry litter" have the meanings assigned by Section 26.301, Water Code.

(b) The commission shall respond and investigate not later than 18 hours after receiving:

(1) a second complaint against a poultry facility concerning odor associated with:

(A) the facility; or

(B) the application of poultry litter to land by the poultry facility; or

(2) a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) If after the investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue
a notice of violation.

(d) The commission by rule or order shall require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. The compliance agreement must include an odor control plan that the executive director determines is sufficient to control odors.

(e) The owner or operator of a new poultry facility shall complete a poultry facility training course on the prevention of poultry facility odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. The owner or operator of a new poultry facility shall maintain records of the training and make the records available to the commission for inspection.

(f) The poultry science unit of the Texas AgriLife Extension Service may charge an owner or operator of a poultry facility a training fee to offset the direct cost of providing the training.

SECTION 2. Section 26.302, Water Code, is amended by adding Subsections (b-2) and (b-3) to read as follows:

(b-2) The State Soil and Water Conservation Board in consultation with the Texas Commission on Environmental Quality by rule shall establish criteria to determine the geographic, seasonal, and agronomic factors that the board will consider to determine whether a persistent nuisance odor condition is likely to occur when assessing the siting and construction of new poultry
facilities.

(b-3) The State Soil and Water Conservation Board may not certify a water quality management plan for a poultry facility located less than one-half of one mile from a business, off-site permanently inhabited residence, or place of worship if the presence of the facility is likely to create a persistent odor nuisance for such neighbors, unless the poultry facility provides an odor control plan the executive director determines is sufficient to control odors. This subsection does not apply to:

(1) a revision of a previously certified and existing water quality management plan unless the revision is necessary because of an increase in poultry production of greater than 50 percent than the amount included in the existing certified water quality management plan for the facility; or

(2) any poultry facility located more than one-half of one mile from a surrounding business, permanently inhabited off-site residence, or place of worship established before the date of construction of the poultry facility.

SECTION 3. Subchapter H, Chapter 26, Water Code, is amended by adding Sections 26.304 and 26.305 to read as follows:

Sec. 26.304. RECORDS OF SALE, PURCHASE, TRANSFER, OR APPLICATION OF POULTRY LITTER. (a) A poultry facility that sells or transfers poultry litter for off-site application must maintain until the second anniversary of the date of sale or transfer a record regarding:

(1) the identity of the purchaser or applicator;

(2) the physical destination of the poultry litter
identified by the purchaser or transferee;

(3) the date the poultry litter was removed from the poultry facility; and

(4) the number of tons of poultry litter removed.

(b) A person that purchases or obtains poultry litter for land application must maintain until the second anniversary of the date of application a signed and dated proof of delivery document for every load of poultry litter applied to land. The landowner or the owner’s tenant or agent shall note on the document the date or dates on which the poultry litter was applied to land.

(c) Subsection (b) does not apply to poultry litter that is:

(1) taken to a composting facility;

(2) used as a bio-fuel;

(3) used in a bio-gasification process; or

(4) otherwise beneficially used without being applied to land.

Sec. 26.305. INSPECTION OF RECORDS. The commission may inspect any record required to be maintained under this subchapter.

SECTION 4. Section 5.1175, Water Code, is amended to read as follows:

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) The commission by rule may [shall] allow a person who [small business that] owes a monetary civil or administrative penalty imposed for a violation of law within the commission's jurisdiction or for a violation of a license, permit, or order issued or rule adopted by the commission to pay the penalty in periodic installments. The rule must provide a procedure for a person [qualified small
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(1) To apply for permission to pay the penalty over time.

(b) (e) The rule must classify small businesses by their net annual receipts and number of employees. A business that is a wholly owned subsidiary of a corporation may not qualify as a small business under this section.

Section 5. Section 7.002, Water Code, is amended to read as follows:

Sec. 7.002. ENFORCEMENT AUTHORITY. The commission may initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions. The commission or the executive director may institute legal proceedings to compel compliance with the relevant provisions of this code and the Health and Safety Code and rules, orders, permits, or other decisions of the commission. The commission may delegate to the executive director the authority to issue an administrative order, including an administrative order that assesses penalties or orders corrective measures, to ensure compliance with the provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions.
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SECTION 6. Subsection (h), Section 26.0135, Water Code, is amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section [from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed]. Irrigation water rights, non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, [that program funds are equitably apportioned among basins], that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177. [The rules concerning the apportionment and assessment of reasonable costs shall provide for
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a recovery of not more than $5,000,000 annually. Costs recovered by
the commission are to be deposited to the credit of the water
resource management account and may be used only to accomplish the
purposes of this section. The commission may apply not more than 10
percent of the costs recovered annually toward the commission's
overhead costs for the administration of this section and the
implementation of regional water quality assessments. The
commission, with the assistance and input of each river authority,
shall file a written report accounting for the costs recovered
under this section with the governor, the lieutenant governor, and
the speaker of the house of representatives on or before December 1
of each even-numbered year.

SECTION 7. The change in law made by Subsection (e), Section
382.068, Health and Safety Code, as added by this Act, applies only
to an owner or operator of a poultry facility the construction of
which begins on or after the effective date of this Act. An owner or
operator of a poultry facility the construction of which began
before the effective date of this Act is governed by the law in
effect at the time the construction of the facility began, and the
former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2009.
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David B. Swindler  
President of the Senate

I hereby certify that S.B. No. 1693 passed the Senate on April 24, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 30, 2009, by the following vote: Yeas 31, Nays 0.

Joe Straus  
Speaker of the House

I hereby certify that S.B. No. 1693 passed the House, with amendments, on May 26, 2009, by the following vote: Yeas 145, Nays 0, two present not voting.

Dan鍋  
Secretary of the Senate

Robert Haney  
Chief Clerk of the House

Approved:  
19 Jun 09

Rick Perry  
Governor

Filed in the office of the Secretary of State  
2 P.M.  6:00 O'Clock  
Jun 19 2009