

SUBJECT: TNRCC environmental permitting procedures

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Chisum, Jackson, Dukes, Howard, Kuempel, Talton, Yost
0 nays
2 absent — Stiles, Talton

WITNESSES: For — Paul Seals and Jon Fisher, Texas Chemical Council; Mary Miksa, Texas Association of Business and Chambers of Commerce; James Terrell, Texas Association of Dairymen; Buck Wynne

Against — Ken Kramer, Sierra Club; Les Breeding, Sierra Blanca Legal Defense Fund

On — Jim Phillips, Texas Natural Resource Conservation Commission; Roliff Purrington

DIGEST: CSHB 2491 would add a new Subchapter J to the Water Code, standardizing permitting processes for air, waste and water permits issued by the Texas Natural Resource Conservation Commission (TNRCC).

The permitting procedures in the bill would apply to applications to issue, amend or renew permits for which public notice and hearings would be required.

The TNRCC would provide for permits-by-rule to the greatest extent possible and would identify, by rule, categories of applications related to permits for which notice or public hearings were not required.

The TNRCC would exempt from notice and public hearing requirements certain applications that would not significantly increase air emissions, fluid discharges or quantities of waste, or cause a deterioration of water or air quality in the state. The TNRCC executive director would be allowed to take action on any application.

When a permit application was complete, the executive director would be required to issue a draft permit or a notice of intent to deny the permit. A notice of intent to deny would include the state's reason for the intended denial.

The director would be required to include a record of the proposed decision with both a draft permit or a notice of intent to deny and send it to the applicant, a state agency or any other person by request. CSHB 2491 would provide a detailed list of what would be required to be included in the record of proposed decision.

An applicant would be allowed to give public notice of the application before it was complete. If there were no requests for a public hearing or those requests were unreasonable, the director could take final action on the permit.

Public notice and a 30-day public comment period would be required concerning a draft permit or a notice of intent to deny a permit. The executive director would have the authority to attempt to resolve issues if a draft permit were opposed.

A ruling concerning a draft permit issuance or denial could not be made without the opportunity for a public hearing. The executive director would determine if such a hearing were necessary. However, the executive director would be required to hold a public hearing for a hazardous waste permit if a request for public hearing were made within 30 days of public notice. Hearings would not be subject to the requirements of the Administrative Procedures Act.

The permit applicant would be required, on the request of an affected person, to furnish a bond to pay for the non-legal costs of that affected person who provided information to the TNRCC about the permit. The director would decide whether or not such costs could be reimbursed.

The executive director could deny a permit, in whole or in part, and issue a response to comments upon issuing a final decision. The TNRCC could review the executive director's final decision under certain circumstances. If TNRCC modified or rejected that decision, the commission would have

to issue a written decision that included the reason and legal basis for the reversal.

A person affected by the executive director's decision, or the TNRCC's action on that decision, could petition for judicial review.

The bond for an application for a new commercial hazardous waste facility would be \$1,000 or \$20,000 for a new non-commercial hazardous waste facility.

This bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 2491 would help to streamline the permitting process at TNRCC without precluding the opportunity for public hearings on relevant issues. In some cases, when no significant change in discharge or emissions would be made due to a permit change, there is no need for a new hearing on that issue. Permit-by-rule would simplify the permitting process and eliminate duplicative permitting requirements.

CSHB 2491 would actually increase substantive public participation in the permitting process. The type of hearing provided for in the bill would be open to everyone who had a concern over the permit. It is the type of hearing required by the Environmental Protection Agency. At such a hearing, all interested persons would be given the opportunity to present their point of view and examine testifying witnesses. Both the public hearings and permits-by-rule authorized in the bill are allowed under federal law; the state should not require permitting procedures more stringent than federal requirements.

The bill would also encourage public participation by requiring, in certain cases, that the permit applicant pay for the non-legal costs of an affected person who provides information to the TNRCC about the permit.

Currently, members of the public who want to become involved in a contested case permit hearing, which is essentially a trial, must undergo the expense of hiring lawyers or consultants if they want to participate in a meaningful way. Contested case hearings are very expensive for everyone

involved; they can take months or even years to resolve, often accomplishing very little. Certain interest groups use these hearing to oppose and delay applications for political reasons that have little to do with the actual details of the permit itself, wasting time and money for both the TNRCC and the permit applicant.

Regulated entities would save money and time if there were one set of standards for all hearings and permit proceedings. A coordinated, consistent permitting process would attract major industries (and resulting jobs) to the state. The state has trouble competing with neighboring states in attracting industries who are wary of the time and trouble it can take to obtain a permit in Texas.

Certain interest groups use the threat of contested case hearings to bargain for concessions that they could not achieve through the laws of the state, and businesses agree to such demands in order to avoid spending millions of dollars on a contested case hearing.

**OPPONENTS
SAY:**

CSHB 2491 would eliminate the vast majority of opportunities for hearings and effective public participation in TNRCC's permitting process, severely limiting the public's ability to participate in agency decisions. The bill would direct TNRCC to use permit-by-rule procedures, allowing almost automatic permit approval (and no public participation) if the applicant met certain criteria.

Public input during the permitting process would be limited. The affected community and neighbors of the proposed site, who have a great stake in the outcome of permit renewals, would be left out of the process.

Often it is the public who has the best information about the current practices of the permit applicant. It may sound reasonable to eliminate the opportunity for contested case hearings if there are no "significant increases in discharge or emissions," but citizens ought to have a chance to be heard on whether or not proposed actions by polluting industries will affect them. Comment should also be allowed on whether or not discharges and emissions need to be reduced. Not all Texans are satisfied with current levels of allowable pollution, especially when it may be harming their children.

The bill would substitute a sham "public comment and hearing process" for a more a meaningful contested case hearing, which allows citizens to obtain, through discovery, relevant information from permit applicants. The hearing allowed by the bill (little more than a public meeting) would allow citizens to vent their frustrations and express their concerns, but there would be no assurance that their concerns would be given due weight or meaningful consideration.

A permit applicant could build a facility as soon as the executive director issued a decision on the permit, whether or not the permit was appealed to the TNRCC commissioners. Permit decisions would be made by the executive director rather than the three appointed TNRCC commissioners, concentrating too much power in the hands of one official.

NOTES:

The committee substitute to HB 2491 would allow the director to take final action on a permit under certain circumstances and list conditions for permits to be exempt from notice and public hearing. The original version would have authorized consolidated permits.