

- SUBJECT:** TNRCC approval of water-quality management plans
- COMMITTEE:** Natural Resources — favorable, without amendment
- VOTE:** 9 ayes — Counts, T. King, Cook, Corte, Hamric, R. Lewis, Puente, Shields, Walker
0 nays
- WITNESSES:** None
- BACKGROUND:** The federal Clean Water Act (CWA) requires each state to assess and identify water bodies to determine if they are impaired or threatened and to implement strategies to reduce specific pollutants. A key measurement used in these activities is the Total Maximum Daily Load (TMDL), a quantitative assessment of the amount of pollution a water body can assimilate and still maintain water-quality standards for its designated uses.
- The CWA requires states to have water-quality management plans that must include TMDLs and other similar evaluations for rivers and streams. The Texas Natural Resource Conservation Commission (TNRCC) uses these plans when issuing new permits to determine if a stream can absorb the amount of pollutants proposed by the permit, taking into account other discharges into the same stream segment.
- DIGEST:** HB 2588 would allow TNRCC’s executive director to approve water-quality management plans and revisions to those plans after providing an opportunity for public participation that met minimum federal requirements. The commission could adopt rules governing approval of water-quality management plans.
- The bill would delete current law that requires:
- ! water-quality management plans that are prepared or significantly revised to be submitted to the commission, to local governments, and to other federal, state, and local agencies that TNRCC judges to have a legitimate interest in the plan;
 - ! after a reasonable period of time for people to review and consult the plan, notice of a public hearing be given to the applicant and to the people

to whom the plan was submitted for review;

- ! a public hearing be held on whether or not the plan should be approved or modified in any way; and
- ! after the hearing, the commission approve, disapprove, or modify the plan as necessary or return it so it can be resubmitted to the commission.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

HB 2588 would allow TNRCC to issue wastewater discharge permits more efficiently under the National Pollutant Discharge Elimination System (NPDES) program. Without this bill, the permitting process will bog down completely because the federal government recently has begun to require that the state's water-quality plan be modified every time a new permit is issued.

In September 1998, the U.S. Environmental Protection Agency delegated administration of the NPDES wastewater and storm-water permitting program to TNRCC. The state must phase in a number of new requirements under NPDES, including one that requires each permit issued in Texas to be consistent with the state's water-quality management plan.

HB 2588 would delete current statutory language requiring TNRCC to submit the revised plan to state and local governments and hold a public hearing on whether or not the plan should be modified. This is necessary because the state will have to issue about 2,000 new NPDES permits this year and 700 permits each year thereafter. Unless the provision for mandatory notice and hearings is deleted, TNRCC will have to hold thousands of public hearings, and permitting will grind to a halt.

HB 2588 would allow TNRCC's executive director to approve changes made to the water-quality plan each time a permit was issued, eliminating the requirement for the commission to approve those changes, which would slow down the process substantially. Under TNRCC rules, when the executive director makes a decision, a person can ask the commission to reconsider it. The bill would not eliminate this practice, so there is no reason to put a similar requirement into the statutes.

The bill would not prohibit the commission from approving changes to the plan. It merely would allow the executive director to approve these changes. The commission would retain its prerogative to approve any change that

warranted commission review. Nor would the bill eliminate the possibility of a hearing. HB 2588 would require TNRCC to provide an opportunity for public participation that, at a minimum, met federal requirements. The commission could choose to hold a hearing on significant changes or on any other change in which the public had shown unusual interest.

The executive director could not approve TMDLs under this bill. TNRCC's contract with the federal government for the TMDL program requires the commission to approve TMDLs as part of the federally mandated Continuing Planning Process.

OPPONENTS
SAY:

HB 2588 would eliminate a requirement for hearings on revisions of water-quality plans and would allow revisions of plans go to TNRCC's executive director rather than to the commission for approval. This could be unfortunate, since water-quality management plan revisions can include non-routine matters such as decisions concerning TMDLs and other water-quality policy issues in which the public has a significant stake. Federal public participation requirements for water-quality management plans merely require notice to be given and do not require a public hearing automatically.

Providing a mechanism for TNRCC to make routine revisions to the water-quality plan efficiently and quickly is a good idea. However, some revisions can involve significant issues related to restrictions placed on wastewater dischargers or the apportionment of pollution reductions to various types of operations. These important policy questions deserve a public hearing and should be approved by the commission rather than the executive director.

There is less scrutiny and accountability when a decision goes to the executive director rather than to the three-member commission. It would be better to allow the commission to delegate minor decisions to the executive director than to leave the commissioners out of the process entirely. Commission decisions, unlike those of the executive director, are made at public meetings, subject to the Open Records Act.

OTHER
OPPONENTS
SAY:

This bill should require the commission to give interested parties the right to seek commission review of the executive director's decisions regarding water-quality plans, approvals, or revisions. This would mirror TNRCC's current practice of allowing a person to make a motion for reconsideration of a decision made by the executive director. This policy should be put in statute,

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however, since HB 2588 could be interpreted as eliminating the practice of allowing motions for reconsideration.

NOTES:

The companion bill, SB 1308 by Brown, is similar to HB 2588 except that it includes a provision that would require TNRCC to provide an opportunity for an interested person to seek commission review of the executive director's decision regarding approval or revision of a water-quality management plan. SB 1308 passed the Senate on April 15 and was reported favorably by the House Natural Resources Committee on April 28, making it eligible to be considered in lieu of HB 2588.