

SUBJECT: TCEQ permitting of greenhouse gas emissions

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 9 ayes — Harless, Márquez, Isaac, Kacal, Lewis, Reynolds, E. Thompson, C. Turner, Villalba

0 nays

WITNESSES: For — Michael Heim, Gas Processors Association; Celina Romero, Texas Pipeline Association; Thomas Sullivan, Zephyr Environmental and greenhouse gas applicant clients; Mark Vickery, Texas Association of Manufacturers; Christina Wisdom, Texas Chemical Council; (*Registered, but did not testify*: Marty Allday, Enbridge Energy; Richard A. (Tony) Bennett; Texas Association of Manufacturers; Anne Billingsley, ONEOK; Jay Brown, Valero; Sabrina Brown, Dow Chemical; Thure Cannon and Patrick Nugent, Texas Pipeline Association; Teddy Carter, Texas Independent Producers and Royalty Owners Association; Elizabeth Castro, LyondellBasell; Sara Cronin, TPC Group; Jim Dow, Pioneer Natural Resources; Liza Firmin, Access Midstream Partners and Chesapeake Energy; Delbert Fore, Enterprise Products; Mark Gipson, Devon Energy; Kinnan Golemon, Shell Oil Co.; Jim Grace, CenterPoint Energy Inc.; Hugo Gutierrez, Marathon Oil; Gilbert Hughes, American Electric Power; Warren Mayberry, DuPont; Mike Meroney, Huntsman Corp., Sherwin Alumina Co.; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum; Bill Oswald, Koch Companies; Gardner Pate, Phillips 66; William W. Phelps, Total Petrochemicals, Inc., Alon USA, Inc.; Patrick Reinhart, El Paso Electric Co.; Mari Ruckel, Texas Oil and Gas Association; Lindsay Sander, Markwest Energy; William Stevens, Texas Alliance of Energy Producers; Julie Williams, Chevron USA, Inc.; Eric Woomer, Samsung Austin Semiconductor)

Against — David Power, Public Citizen

On — Booker Harrison and Mike Wilson, Texas Commission on Environmental Quality; Cyrus Reed, Sierra Club, Lone Star Chapter

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) regulates and

issues permits for federally regulated air emissions, but not for greenhouse gases. The Environmental Protection Agency (EPA) issues permits for emissions of greenhouse gases in Texas.

A contested case hearing is an evidentiary hearing before an administrative law judge in which the parties directly affected by a permit are given the opportunity to dispute it.

DIGEST:

CSHB 788 would allow the TCEQ to issue permits to facilities to emit greenhouse gases, which would be defined as carbon dioxide, methane, nitrous oxide, and certain other chemicals. TCEQ would be required to develop rules to implement a greenhouse gas permitting program and procedures to transition to the TCEQ any applications pending with the EPA. It also would prepare and submit to the EPA for approval program revisions reflecting the state's greenhouse gas permitting program.

The bill would exempt the review of a greenhouse gas permit from the contested case hearing process.

Under Health and Safety Code, sec. 382.0205 (3), titled "special problems related to air contaminant emissions," CSHB 788 also would remove TCEQ authority to control air contaminants specifically to protect against the adverse effects of "climatic changes, including global warming."

TCEQ could impose fees to pay for greenhouse gas permitting only as necessary to cover additional reasonably necessary direct costs associated with issuing the permits.

If authorization to emit greenhouse gases were no longer required under federal law, the TCEQ would repeal any rules adopted under the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 788 would end the inefficient and costly dual processes that facilities must go through when seeking permits to generate greenhouse gases and other air emissions. The current process forces companies to go to EPA's Region 6 office in Dallas for a greenhouse gas permit while simultaneously pursuing a permit from the TCEQ for all other major sources of federally regulated air pollutants. This process creates delay and

adds to the costs for permits.

The EPA began regulating the emission of greenhouse gases nationally under the Clean Air Act in January 2011, and it has authorized states to manage the permitting of greenhouse gas emissions. The TCEQ, which has issued permits for federally regulated air pollution since 1992, has maintained that it does not have the authority to regulate greenhouse gases under current law. CSHB 788 would clarify that the TCEQ had this authority.

The TCEQ issues many permits related to the emissions of air pollution, with most issued in less than 12 months. In contrast, the EPA's time frame for processing greenhouse gas permits has increased to well more than a year. The EPA's Region 6 office in Dallas has a backlog of more than 50 greenhouse gas permit applications from Texas companies and more are expected.

If the TCEQ began permitting emission of greenhouse gases, these reviews could be handled more efficiently and incorporated into the TCEQ's existing air permitting process. The TCEQ also could avoid many of the reviews that take place at the EPA, such as coordinating the issuance of its federal greenhouse gas permits with other federal agencies and conducting endangered species and cultural assessments. These assessments are not required at the state level and further delay the processing of issuing permits for emitting greenhouse gas.

The failure to enact CSHB 788 could lead to the loss of business to neighboring states. All the states surrounding Texas — Arkansas, Louisiana, Oklahoma and New Mexico — issue greenhouse gas permits as part of their state air emissions permitting programs.

CSHB 788 would benefit the construction of natural gas pipelines, processing plants, petrochemical, and other industrial complexes. The existing permitting inefficiencies and regulatory uncertainty put at risk large business investments and force businesses to consider locating new projects elsewhere, potentially harming the state's economy. Already, there are instances in which natural gas produced in Texas is being piped to Louisiana for processing because failure to receive permits in a timely manner has delayed the construction of pipelines and processing facilities. In another example, a company is considering building a \$1 billion chemical facility in Texas but has been hampered in raising the capital to

finance the project because of uncertainty over when it can expect to receive a permit from the EPA for emitting greenhouse gases.

CSHB 788 would limit delays in permitting by disallowing contested case hearings involving greenhouse gases. The EPA does not allow contested case hearings as part of its permitting process, and there is no reason for the state to do so. Greenhouse gases associated with a particular permit do not have a localized effect, and there is no need to expose the businesses to needless delays associated with contested case hearings when there is no local affected party.

The bill would remove the TCEQ's authority to regulate air emissions for the purposes of addressing climate change. This change would allow the TCEQ to permit greenhouse gas emissions as a part of its regular permitting review without wading into the larger debate about climate change.

The bill would protect the state if the federal government ruled it would no longer regulate greenhouse gas emissions by requiring the TCEQ to abolish its greenhouse gas permitting program.

CSHB 788 would keep permitting fees reasonable by limiting the fees TCEQ could charge to those necessary and reasonable to cover the direct costs associated with permitting greenhouse gases.

**OPPONENTS
SAY:**

By eliminating the contested case hearings for greenhouse gases, CSHB 788 would deprive the public of an important venue for comment and the opportunity to suggest permit enhancements. Contested case hearings ensure adequate public notice, a public opportunity to review the draft permit, and the right to seek redress in Texas instead of at the federal level. Contested case hearings offer a vehicle for the public to push for innovative technologies and address unintended consequences of a facility. CSHB 788 should be modified to allow for greater participation of the public in greenhouse gas permitting issues.

CSHB 788 should not delete provisions in existing state law, Health and Safety Code, sec. 382.0205 (3), that allow the TCEQ to regulate air emissions to protect against climate change. The vast majority of climate scientists agree that greenhouse gases contribute to climate change, and the state should not back away from this reason for the state to regulate greenhouse gases.

NOTES:

CSHB 788 differs from the bill as introduced by:

- specifying legislative findings;
- authorizing fees only to the extent necessary to cover direct costs associated with administering the greenhouse gas permit program;
- removing the TCEQ's authority to regulate emissions for climate change under Health and Safety Code, sec. 382.0205 (3); and
- exempting greenhouse gas permits from contested case hearing requirements.

The companion bill, SB 536 by Hinojosa, was referred to the Senate Committee on Natural Resources on February 20.