

SUBJECT: Allowing construction while air quality permit amendment was pending

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Lozano, E. Thompson, Blanco, Kacal, Kuempel, Morrison, J. Turner

2 nays — Reynolds, Zwiener

WITNESSES: For — Jeff Saitas, Valero; (*Registered, but did not testify*: Carolyn Brittin, Associated General Contractors of Texas, Highway, Heavy; Mike Meroney, BASF Corporation; Price Ashley, Cheniere Energy; Steve Perry, Chevron USA; Bill Oswald, Koch Companies; Neal T. Buddy Jones, Marathon Petroleum Inc.; Randy Cubriel, Nucor; Stephen Minick, Republic Services; Mia Hutchens, Texas Association of Business; Mark Vickery, Texas Association of Manufacturers; Sam Gammage, Texas Chemical Council; Shana Joyce, Texas Oil and Gas Association; Perry Fowler, Texas Water Infrastructure Network)

Against — Adrian Shelley, Public Citizen; Cyrus Reed, Sierra Club Lone Star Chapter; (*Registered, but did not testify*: Rita Beving, Texas Landowners for Eminent Domain Reform)

On — (*Registered, but did not testify*: Robert Martinez and John Minter, Texas Commission on Environmental Quality)

BACKGROUND: Health and Safety Code ch. 382, the Texas Clean Air Act, was established with the purpose of safeguarding the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants. The act is enforced by the Texas Commission on Environmental Quality (TCEQ).

Sec. 382.0518 requires a person planning the construction or modification of a facility that may emit air contaminants to obtain a permit or permit amendment from the TCEQ before construction begins.

Sec. 382.004 allows a person who submits an application for an air quality permit for a modification of or lesser change to an existing facility to, at the person's own risk and to the extent permissible under federal law, begin construction on the modification or change after the application is submitted and before TCEQ has issued the permit.

DIGEST: CSHB 2726 would amend Health and Safety Code sec. 382.004 to allow a person who submitted an application for a permit amendment, to, at the person's own risk and to the extent permissible under federal law, begin construction related to the application after the executive director of the Texas Commission on Environmental Quality (TCEQ) had issued a draft permit including the permit amendment.

TCEQ would adopt rules to implement the bill's provisions.

The bill would take effect January 1, 2020, and would apply only to applications for permit amendments filed with the TCEQ on or after that date.

SUPPORTERS SAY: CSHB 2726 would appropriately amend and clarify current law to allow applicants for permit amendments under the Texas Clean Air Act to make a business decision about whether or not to bear the risk of beginning construction on their facilities while waiting for a permit to be issued by the Texas Commission for Environmental Quality (TCEQ).

Because the word "facility" as used in the Texas Clean Air Act is defined differently than in federal law, existing statute that would allow individuals to make these business decisions while waiting for an air quality permit has been interpreted in a way that has made the statute ineffective. CSHB 2726 would clarify that applicants for permit amendments could begin construction related to the application they had submitted to the TCEQ. This would streamline the construction process and make it possible for applicants to begin work without unnecessary delays if they decided that was the right business risk to take.

The amended statute would only apply to minor source permit

applications and would not affect the environmental review process or the notice and opportunity for a contested case hearing process.

OPPONENTS
SAY:

CSHB 2726 would allow facilities to begin construction while their permit amendment applications were being reviewed. This could frustrate the feedback process between applicants and the TCEQ, which was designed to improve pollution control and protect public health and safety. Engineers at TCEQ can work with permit applicants during the permit application review process to make needed improvements to the permit, such as improving a facility's pollution control strategies. Allowing construction to begin before this review was complete could weaken the oversight process. Also, minor permit amendments are sometimes the subject of contested case hearings, and allowing construction to begin while such hearings were ongoing could limit the opportunity to improve the facility or its permits as part of the hearing process.