

SUBJECT: Implementing voluntary financial assurance for certain permit holders

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Lozano, E. Thompson, Blanco, Kacal, Kuempel, Morrison, J. Turner, Zwiener

0 nays

1 absent — Reynolds

WITNESSES: For — (*Registered, but did not testify:* David Foster, Clean Water Action; Chris Mullins, Save Our Springs Alliance; Karen Hadden, SEED Coalition; Susan Horton, Texas Municipal League; and six individuals)

Against — (*Registered, but did not testify:* Ryan Paylor, Texas Independent Producers and Royalty Owners Association)

On — (*Registered, but did not testify:* Greg Yturralde, Texas Commission on Environmental Quality)

BACKGROUND: The National Pollutant Discharge Elimination System (NPDES) is a permit program created under the federal Clean Water Act of 1972. NPDES permits are required for the discharge of pollutants into certain bodies of water.

The Texas Commission on Environmental Quality administers the NPDES program in Texas and regulates the discharge of pollutants to the state's surface water, with certain exceptions.

DIGEST: CSHB 4116 would require the Texas Commission on Environmental Quality (TCEQ) to establish a voluntary financial assurance program for holders of permits to discharge effluent into any body of water under the National Pollutant Discharge Elimination System (NPDES).

Under the program, a permit holder could enter into an agreement with

interested parties in the community affected by the holder's facility or proposed facility. The program would allow the permit holder to deposit with TCEQ an amount of money or equivalent financial assurance to be used in the event that the permit holder caused a discharge that violated the terms of the agreement.

The agreement could be entered into at any time before the relevant NPDES permit was issued and would have to include provisions allowing for the cancellation of the agreement and the return of the financial assurance to the permit holder in the event that a party not included in the agreement sought to demand a contested case regarding the relevant permit.

Agreements could only include provisions restricting discharges if the provisions specified:

- the amount of discharge allowed;
- the frequency of discharge allowed; and
- the minimum flow that must be present in order for a discharge to be allowed.

Agreements also would have to include the total amount of financial assurance and specific amounts to be deducted if the permit holder violated the agreement.

TCEQ would be required to adopt rules to implement the program and to establish the types of financial assurance to be deposited by permit holders, including payment bonds and letters of credit. The duration of the financial assurance deposited by a permit holder would have to extend at least for the duration of the term of the discharge permit, including any amendment.

If the permit holder violated the terms of the agreement, money could be withdrawn from the financial assurance according to commission rule. The money would be deposited to the credit of the Texas Water Resources Fund for use in the green project reserve program administered by the

Texas Water Development Board.

A party to an agreement under the bill that was not a permit holder would be considered an affected person. Notwithstanding any other law, and in accordance with NPDES program requirements, the renewal of a NPDES permit that was the subject of an agreement under the bill, including an agreement under which a complete drawdown of the financial assurance had occurred, could be the subject of a contested case hearing.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 4116 would create a voluntary program to help certain permit holders and affected persons negotiate mutually acceptable agreements. These agreements could include more stringent limitations than Texas Commission on Environmental Quality (TCEQ) permits, which would better protect communities and stakeholders, and would be backed by financial assurances from permit holders. This could help communities and permit holders avoid costly legal disputes or actions and provide interest groups with a more enforceable tool. The program would not override TCEQ's recommendations or permits, and because it would be voluntary, the program would not burden any permit holder or facility.

**OPPONENTS
SAY:**

CSHB 4116 would establish an unnecessary program. Companies that hold discharge permits can already enter into voluntary agreements with local communities without the added regulatory burden this bill would create. The program created by CSHB 4116 also would run the risk of becoming yet another mandated expense imposed on the free market.

NOTES:

According to the Legislative Budget Board, the bill would result in an indeterminate fiscal impact to the state. The number of permit holders that would join the financial assurance program established under the bill, and the amount of funds deposited and held by the Texas Commission on Environmental Quality, is unknown.