

SUBJECT: Allowing TPWD to intervene in certain water permit applications

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — T. King, Bowers, Kacal, Lucio, Price, Ramos, Walle, Wilson
2 nays — Larson, Paul
1 absent — Harris

WITNESSES: *Hearing on April 6:*
For — Shane Bonnot, Coastal Conservation Association; Kirby Brown, Ducks Unlimited; Myron Hess, National Wildlife Federation; John Shepperd, Texas Foundation for Conservation; David Yeates, Texas Wildlife Association; Joseph Fitzsimons; (*Registered, but did not testify:* Scott Moorhead, Audubon Texas; Mickey Reeves, Backcountry Hunters and Anglers; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Vanessa Puig-Williams, Environmental Defense Fund; Judith McGeary, Farm and Ranch Freedom Alliance; Kinnan Golemon, Friends of San Saba; Robert E. Johnson Jr., King Ranch Inc.; Cyrus Reed, Lone Star Chapter Sierra Club; Chad Wilbanks, Miso's Oysters and Prestige Oysters; Adrian Shelley, Public Citizen; Carrie Simmons, Texas Chapter of the Wildlife Society; Ben Jones, Texas Conservation Alliance; Cheri Huddleston, Texas Travel Alliance; Ron Hinkle, Texas Travel Association; David Bezanson, The Nature Conservancy; George Cofer; Vanessa MacDougal)

Against — Mark Vickery, Texas Association of Manufacturers; (*Registered, but did not testify:* Sam Gammage, Texas Chemical Council; Ryan Paylor, Texas Independent Producers and Royalty Owners Association)

On — (*Registered, but did not testify:* Erin Chancellor and Kimberly Nygren, Texas Commission on Environmental Quality; John Dupnik, Texas Water Development Board)

Hearing on April 13:

For — (*Registered, but did not testify:* Cyrus Reed, Lone Star Chapter Sierra Club)

Against — None

On — James Murphy, Texas Parks and Wildlife Department

BACKGROUND: Water Code sec. 5.115(b) prohibits certain state agencies from contesting to the issuance of a permit or license by the Texas Commission on Environmental Quality.

DIGEST: CSHB 2716 would allow the Texas Parks and Wildlife Department (TPWD) to request a hearing and full party status on an application for a permit to store, take, or divert water that was subject to notice and opportunity for a hearing. TPWD also could request a hearing and full party status on a permit or authorization under review by the Texas Commission on Environmental Quality (TCEQ) that was subject to notice and opportunity for hearing and could adversely affect property or fish and wildlife resources managed by the department. TPWD would have to be granted a hearing on request, notwithstanding other laws prohibiting agencies from contesting permits.

The bill would specify that TCEQ was required to furnish to TPWD a copy of all permit applications to store, take, or divert water, and TPWD would have to make recommendations to TCEQ to protect fish and wildlife resources. In a proceeding for an individual water right governed by environmental flow standards, TPWD could not make a recommendation for a schedule of flow or releases that was in conflict with the applicable standards.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: CSHB 2716 would give the Texas Parks and Wildlife Department (TPWD) the ability to request a hearing and be granted full party status on an application for a permit to store, take, or divert water if the permit

could adversely affect its property or wildlife resources, which would help it to carry out its mission to manage state resources effectively.

The bill would restore this authority that the TPWD had before it was removed by a little-understood piece of legislation in 2011. This would help the department meaningfully participate in decisions about granting water rights, better perform its mission of managing natural resources, and protect state resources. The bill would provide that TPWD could make recommendations based on its expertise and would prohibit the department from making a recommendation that conflicted with environmental flow standards.

It is appropriate for TPWD to be involved in a permitting process in which the department's mission is directly affected, and TPWD should be able to advocate on behalf of matters under its jurisdiction. The current process does not suffice as the department's comments have not been adequately addressed and, while permit delays may occur, including TPWD in the process would result in better permits both for industry and for the environment.

**CRITICS
SAY:**

CSHB 2716 would involve TPWD in contested case hearings for water permits pending before TCEQ. In the current Sunset review for TPWD, this was not listed as an essential function of the agency, nor should one state agency interfere in another's permitting process. The current system, in which TPWD may send comments to TCEQ on a pending permit, is sufficient, and changing the system to align with the bill could delay permitting.