

By: Schwertner, et al. S.B. No. 1397
(Bell of Kaufman, Holland, Goldman, Canales, Clardy, et al.)

Substitute the following for S.B. No. 1397:

By: Bell of Kaufman C.S.S.B. No. 1397

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 382.05101, Health and Safety Code, is amended to read as follows:

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which the following types of permits are not required:

(1) a permit under Section 382.0518 or 382.0519;

(2) ~~[a]~~ a standard permit under Section 382.05195, ~~[or 382.05198],~~ or 382.051985; or

(3) ~~[a]~~ a permit by rule under Section 382.05196 ~~[is not required]~~.

SECTION 2. Section 382.0511(c), Health and Safety Code, is amended to read as follows:

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

(1) the changes are de minimis under Section 382.05101; or

(2) the owner or operator:

1 (A) has obtained a preconstruction permit or
2 permit amendment required by Section 382.0518; or

3 (B) is operating under:

4 (i) a standard permit under Section
5 382.05195, ~~[or]~~ 382.05198, or 382.051985;

6 (ii) a permit by rule under Section
7 382.05196; or

8 (iii) an exemption allowed under Section
9 382.057.

10 SECTION 3. Subchapter C, Chapter 382, Health and Safety
11 Code, is amended by adding Section 382.051985 to read as follows:

12 Sec. 382.051985. STANDARD PERMIT FOR CERTAIN TEMPORARY
13 CONCRETE PLANTS FOR PUBLIC WORKS. (a) The commission shall issue a
14 standard permit that meets the requirements of Section 382.05195
15 for a temporary concrete plant that performs wet batching, dry
16 batching, or central mixing to support a public works project. A
17 plant operating under the permit:

18 (1) may not support a project that is not related to
19 the public works project; and

20 (2) must be located in or contiguous to the
21 right-of-way of the public works project.

22 (b) A plant permitted under this section may occupy a
23 designated site for not more than 180 consecutive days or to supply
24 material for a single project, but not other unrelated projects.

25 SECTION 4. Section 382.056, Health and Safety Code, is
26 amended by adding Subsection (k-2) to read as follows:

27 (k-2) Notwithstanding any other law, if the commission

1 holds a public meeting for a permit application for which
2 consolidated notice was issued under this subchapter, the
3 commission shall hold open the public comment period and the period
4 for which a contested case hearing may be requested for the permit
5 application for at least 36 hours after the end of the meeting.

6 SECTION 5. Section 5.014, Water Code, is amended to read as
7 follows:

8 Sec. 5.014. SUNSET PROVISION. The Texas Commission on
9 Environmental Quality is subject to Chapter 325, Government Code
10 (Texas Sunset Act). Unless continued in existence as provided by
11 that chapter, the commission is abolished [~~and this chapter~~
12 ~~expires~~] September 1, 2035 [~~2023~~].

13 SECTION 6. Section 5.0535, Water Code, is amended by
14 amending Subsection (b) and adding Subsection (d) to read as
15 follows:

16 (b) The training program must provide the person with
17 information regarding:

18 (1) the law governing [~~legislation that created the~~]
19 commission operations;

20 (2) the programs, functions, rules, and budget of
21 [~~operated by~~] the commission;

22 (3) the scope of and limitations on the rulemaking
23 authority of the commission [~~the role and functions of the~~
24 ~~commission~~];

25 (4) [~~the rules of the commission, with an emphasis on~~
26 ~~the rules that relate to disciplinary and investigatory authority,~~

27 [~~(5) the current budget for the commission,~~

1 ~~[(6)]~~ the results of the most recent formal audit
2 ~~[significant internal and external audits]~~ of the commission;

3 (5) ~~[(7)]~~ the requirements of:

4 (A) laws relating to ~~[the]~~ open meetings, ~~[law,~~
5 ~~Chapter 551, Government Code,~~

6 ~~[(B) the]~~ public information, ~~[law, Chapter 552,~~
7 ~~Government Code,~~

8 ~~[(C) the]~~ administrative procedure, and
9 disclosing conflicts-of-interest ~~[law, Chapter 2001, Government~~
10 ~~Code; and~~

11 ~~[(D) other laws relating to public officials,~~
12 ~~including conflict-of-interest laws]; and~~

13 (B) other laws applicable to members of a state
14 policy-making body in performing their duties; and

15 (6) ~~[(8)]~~ any applicable ethics policies adopted by
16 the commission or the Texas Ethics Commission.

17 (d) The executive director shall create a training manual
18 that includes the information required by Subsection (b). The
19 executive director shall distribute a copy of the training manual
20 annually to each member of the commission. Each member of the
21 commission shall sign and submit to the executive director a
22 statement acknowledging that the member received and has reviewed
23 the training manual.

24 SECTION 7. Section 5.113, Water Code, is amended to read as
25 follows:

26 Sec. 5.113. COMMISSION AND STAFF RESPONSIBILITY POLICY.
27 The commission shall develop and implement policies that clearly

1 separate the policy-making [~~the respective~~] responsibilities of
2 the commission and the management responsibilities of the executive
3 director and the staff of the commission.

4 SECTION 8. The heading to Section 5.129, Water Code, is
5 amended to read as follows:

6 Sec. 5.129. SUMMARY OF AND INFORMATION PROVIDED BY [~~FOR~~]
7 PUBLIC NOTICES.

8 SECTION 9. Section 5.129, Water Code, is amended by
9 amending Subsection (a) and adding Subsection (a-1) to read as
10 follows:

11 (a) The commission by rule shall provide for each public
12 notice issued or published by the commission or by a person under
13 the jurisdiction of the commission as required by law or by
14 commission rule to include:

15 (1) at the beginning of the notice a succinct
16 statement of the subject of the notice; and

17 (2) to the extent applicable, the name of the permit
18 applicant, the type of permit applied for, and the location of each
19 proposed or existing site subject to the proposed permit.

20 (a-1) Rules adopted under this section [~~The rules~~] must
21 provide that a summary statement must be designed to inform the
22 reader of the subject matter of the notice without having to read
23 the entire text of the notice.

24 SECTION 10. Subchapter D, Chapter 5, Water Code, is amended
25 by adding Section 5.136 to read as follows:

26 Sec. 5.136. COMMUNITY OUTREACH. The commission shall
27 provide outreach and education to the public on participating in

1 the permitting process under the air, waste, and water programs
2 within the commission's jurisdiction.

3 SECTION 11. Subchapter E, Chapter 5, Water Code, is amended
4 by adding Section 5.1734 to read as follows:

5 Sec. 5.1734. ELECTRONIC POSTING OF PERMIT APPLICATIONS.

6 (a) The commission shall post on its website at the time a permit
7 application becomes administratively complete:

8 (1) the permit application and any associated
9 materials; and

10 (2) for a permit application under Subchapter D,
11 Chapter 11, any map accompanying the permit application.

12 (b) If a permit application is revised or amended after the
13 permit application has become administratively complete, the
14 commission shall post on its website the revised or amended permit
15 application.

16 (c) The commission may exempt any associated materials from
17 being posted on its website under Subsections (a) and (b) if the
18 commission determines that:

19 (1) posting the materials on the website would be
20 unduly burdensome; or

21 (2) the materials are too large to be posted on the
22 website.

23 (d) Notwithstanding any other law, the commission shall
24 require each applicant for a permit, permit amendment, or permit
25 renewal that requires notice be published to include in the notice
26 the address of the website where the public can access information
27 about the permit as described by Subsection (a).

1 (e) In implementing this section, the commission shall
2 consider and accommodate residents of each area affected by a
3 proposed permit, permit amendment, or permit renewal who may need
4 assistance accessing the application and associated materials
5 because of a lack of access to Internet services, particularly when
6 there is a heightened public interest or in response to public
7 comment.

8 SECTION 12. Chapter 5, Water Code, is amended by adding
9 Subchapter M-1 to read as follows:

10 SUBCHAPTER M-1. PERMITTING PROCEDURES GENERALLY

11 Sec. 5.581. DEFINITION. In this subchapter, "permit" means
12 a permit, approval, registration, or other form of authorization
13 required by law for a person to engage in an action.

14 Sec. 5.582. APPLICABILITY. This subchapter applies to
15 programs and permits arising under the air, waste, or water
16 programs within the commission's jurisdiction.

17 Sec. 5.583. ELECTRONIC PUBLICATION OF NOTICE. (a) The
18 commission shall publish notice of a permit application on the
19 commission's website and may provide additional electronic notice
20 through other means, including direct e-mail. Notice published
21 under this section is in addition to any other notice requirement.

22 (b) The commission shall consider and accommodate residents
23 of each area affected by a proposed permit, permit amendment, or
24 permit renewal who may need assistance accessing notice published
25 by electronic means because of a lack of access to Internet
26 services, particularly when there is a heightened public interest
27 or in response to public comment.

1 Sec. 5.584. VERIFICATION OF NOTICE BY NEWSPAPER. If an
2 applicant for a permit is required to publish notice in a newspaper,
3 the applicant shall provide to the commission a copy of the
4 published notice and an affidavit from the publisher certifying
5 that the notice was published and the publication meets all
6 applicable requirements, including newspaper circulation.

7 Sec. 5.585. SECURITY AT PUBLIC MEETING OR PUBLIC HEARING.
8 The commission may request that an applicant for a permit that is
9 the subject of a public meeting or public hearing provide uniformed
10 security at the meeting or hearing sufficient to provide for the
11 safety of all attendees and orderly conduct at the meeting or
12 hearing.

13 Sec. 5.586. NOTICE TO STATE SENATOR AND STATE
14 REPRESENTATIVE. (a) This section applies only to a permit
15 application for which public notice is required.

16 (b) The commission shall send notice of receipt of the
17 application for a permit to each state senator and state
18 representative who represent the area in which the facility or
19 activity to which the application relates is or will be located.

20 Sec. 5.587. TEMPORARY AND INDEFINITE PERMIT REPORTING. (a)
21 This section does not apply to a person who holds a temporary permit
22 or permit with an indefinite term that has a regular reporting
23 requirement.

24 (b) A person who holds a temporary permit or permit with an
25 indefinite term shall report to the commission annually whether the
26 activity subject to the permit is ongoing.

27 SECTION 13. Section [5.754](#), Water Code, is amended by

1 amending Subsection (c) and adding Subsection (c-1) to read as
2 follows:

3 (c) In classifying a person's compliance history, the
4 commission shall:

5 (1) determine whether a violation of an applicable
6 legal requirement is of major, moderate, or minor significance;

7 (2) establish criteria for classifying a repeat
8 violator, including:

9 (A) setting the number of major, moderate, and
10 minor violations needed to be classified as a repeat violator; and

11 (B) giving consideration to the size and
12 complexity of the site at which the violations occurred, and
13 limiting consideration to violations of the same nature and the
14 same environmental media that occurred in the preceding five years;
15 and

16 (3) consider:

17 (A) the significance of the violation and whether
18 the person is a repeat violator;

19 (B) the size and complexity of the site,
20 including whether the site is subject to Title V of the federal
21 Clean Air Act (42 U.S.C. Section 7661 et seq.); and

22 (C) the potential for a violation at the site
23 that is attributable to the nature and complexity of the site.

24 (c-1) The executive director may review, suspend, or
25 reclassify a person's compliance history in accordance with
26 commission rules if the executive director determines that exigent
27 circumstances exist.

1 SECTION 14. Section 7.052(c), Water Code, is amended to
2 read as follows:

3 (c) Except as provided by this subsection, the [The] amount
4 of the penalty for all other violations within the jurisdiction of
5 the commission to enforce may not exceed \$25,000 a day for each
6 violation. The amount of the penalty for such a violation may not
7 exceed \$40,000 a day if:

8 (1) the violation involves:

9 (A) an actual release of pollutants to the air,
10 water, or land that exceeds levels that are protective of human
11 health or environmental receptors; or

12 (B) an actual unauthorized diversion, taking, or
13 storage of state water or an unauthorized change in the flood
14 elevation of a stream that deprives others of water, severely
15 affects aquatic life, or results in a safety hazard, property
16 damage, or economic loss;

17 (2) the person previously committed a violation of the
18 same nature that resulted in the assessment of an administrative
19 penalty; and

20 (3) the commission determines the person could have
21 reasonably anticipated and avoided the violation.

22 SECTION 15. Subchapter C, Chapter 7, Water Code, is amended
23 by adding Section 7.0675 to read as follows:

24 Sec. 7.0675. ENFORCEMENT DIVERSION PROGRAM FOR SMALL
25 BUSINESSES AND LOCAL GOVERNMENTS. (a) In this section, "small
26 business" means a legal entity, including a corporation,
27 partnership, or sole proprietorship, that:

1 (1) is formed for the purpose of making a profit;

2 (2) is independently owned and operated; and

3 (3) has fewer than 100 employees.

4 (b) The commission shall establish an enforcement diversion
5 program for small businesses and local governments. The program
6 must include:

7 (1) resources developed for the small business
8 compliance assistance program under Section 5.135;

9 (2) compliance assistance training; and

10 (3) on-site technical assistance and training
11 performed by commission staff.

12 (c) Before the commission initiates an enforcement action
13 for a violation committed by a small business or local government,
14 the commission may enroll the business or government into the
15 enforcement diversion program.

16 (d) The commission may not enroll a small business or local
17 government into the enforcement diversion program if an enforcement
18 action against the business or government is required by federal
19 law.

20 (e) The commission may not initiate against a small business
21 or local government an enforcement action for a violation that
22 prompted enrollment in the enforcement diversion program after the
23 business or government has successfully completed the program.

24 (f) A small business or local government is not eligible to
25 enroll in the enforcement diversion program if the business or
26 government:

27 (1) committed a violation that:

1 (A) resulted in an imminent threat to public
2 health; or

3 (B) was a major violation, as classified under
4 Section 5.754; or

5 (2) was enrolled in the program in the two years
6 preceding the date of the violation.

7 SECTION 16. Subchapter B, Chapter 11, Water Code, is
8 amended by adding Section 11.02363 to read as follows:

9 Sec. 11.02363. PERIODIC REVIEW OF ENVIRONMENTAL FLOW
10 STANDARDS; STATEWIDE WORK PLAN. (a) Periodically, the advisory
11 group shall review the environmental flow standards for each river
12 basin and bay system adopted by the commission under Section
13 11.1471. In conducting a review of the environmental flow
14 standards, the advisory group shall:

15 (1) work with the science advisory committee and the
16 pertinent basin and bay area stakeholder committees and basin and
17 bay expert science teams in a manner similar to that provided by
18 Section 11.02362;

19 (2) take into consideration the work plans developed
20 under Section 11.02362(p);

21 (3) analyze previous environmental flow
22 recommendations and standards;

23 (4) prescribe future monitoring, studies, and
24 activities needed to better understand the environmental flow; and

25 (5) validate or refine:

26 (A) the environmental flow recommendations;

27 (B) the environmental flow standards adopted by

1 the commission; and

2 (C) strategies to achieve the environmental flow
3 standards.

4 (b) The advisory group shall develop a biennial statewide
5 work plan to prioritize and schedule the review of environmental
6 flow standards under Subsection (a). The work plan must establish:

7 (1) the methodology used to prioritize the review of
8 the environmental flow standards of each river basin and bay
9 system; and

10 (2) a timeline for the review of the environmental
11 flow standards of each river basin and bay system.

12 (c) The advisory group shall submit to the commission:

13 (1) any review conducted under Subsection (a),
14 including recommendations to the commission for use in adopting
15 rules under Section 11.1471; and

16 (2) the biennial work plan developed under Subsection
17 (b).

18 SECTION 17. Section 11.1471, Water Code, is amended by
19 amending Subsection (f) and adding Subsection (g) to read as
20 follows:

21 (f) An environmental flow standard or environmental flow
22 set-aside adopted under Subsection (a) may be altered by the
23 commission in a rulemaking process undertaken in accordance with a
24 schedule established by the commission. The commission shall
25 consider the review of environmental flow standards by the advisory
26 group under Section 11.02363(a) when altering an environmental flow
27 standard or environmental flow set-aside. In establishing a

1 schedule, the commission shall consider the work plan developed by
2 the advisory group under Section 11.02363(b) and the applicable
3 work plan approved by the advisory group under Section 11.02362(p).
4 The commission's schedule may not provide for the rulemaking
5 process to occur more frequently than once every 10 years unless the
6 work plans provide [~~plan provides~~] for a periodic review under
7 Sections 11.02363(a) and [~~Section~~] 11.02362(p) to occur more
8 frequently than once every 10 years. In that event, the commission
9 may provide for the rulemaking process to be undertaken in
10 conjunction with the periodic review if the commission determines
11 that schedule to be appropriate. A rulemaking process undertaken
12 under this subsection must provide for the participation of
13 stakeholders having interests in the particular river basin and bay
14 system for which the process is undertaken.

15 (g) The commission shall submit a biennial report to the
16 advisory group on the implementation and effectiveness of
17 environmental flow standards. The report must include:

18 (1) a description of progress made over the previous
19 biennium in implementing environmental flow standards, including
20 the status of any efforts to set aside unappropriated water for
21 environmental flow protection;

22 (2) input provided by the board and the Parks and
23 Wildlife Department on their:

24 (A) activities related to environmental flow
25 standards; and

26 (B) recommendations for the work plan developed
27 under Section 11.02363(b); and

1 (3) recommendations for the work plan developed under
2 Section 11.02363(b).

3 SECTION 18. Section 49.011(b), Water Code, is amended to
4 read as follows:

5 (b) The commission by rule shall establish a procedure for
6 public notice and hearing of applications. The rules must require
7 an applicant to publish the notice issued by the commission under
8 Subsection (a) once a week for two consecutive weeks in a newspaper
9 regularly published or circulated in the county where the district
10 is proposed to be located not later than the 30th day before the
11 date on which the commission may act on the application. The
12 commission shall provide the notice to each state representative
13 and state senator who represents an area inside the proposed
14 district's boundaries.

15 SECTION 19. The following provisions are repealed:

- 16 (1) Section 11.0236(m), Water Code;
17 (2) Section 11.02361(g), Water Code; and
18 (3) Section 11.02362(s), Water Code.

19 SECTION 20. (a) Except as provided by Subsection (b) of
20 this section, Section 5.0535, Water Code, as amended by this Act,
21 applies to a member of the Texas Commission on Environmental
22 Quality appointed before, on, or after the effective date of this
23 Act.

24 (b) A member of the Texas Commission on Environmental
25 Quality who, before the effective date of this Act, completed the
26 training program required by Section 5.0535, Water Code, as that
27 law existed before the effective date of this Act, is only required

1 to complete additional training on the subjects added by this Act to
2 the training program required by Section 5.0535, Water Code. A
3 member described by this subsection may not vote, deliberate, or be
4 counted as a member in attendance at a meeting of the commission
5 held on or after December 1, 2023, until the member completes the
6 additional training.

7 SECTION 21. A permit holder subject to Section 5.587, Water
8 Code, as added by this Act, shall first report to the Texas
9 Commission on Environmental Quality the status of the permitted
10 activity not later than December 31, 2024.

11 SECTION 22. The change in law made by this Act to Section
12 7.052, Water Code, applies only to a violation that occurs on or
13 after the effective date of this Act. A violation that occurs
14 before the effective date of this Act is governed by the law in
15 effect on the date the violation occurred, and the former law is
16 continued in effect for that purpose.

17 SECTION 23. (a) The Texas Commission on Environmental
18 Quality shall submit to the environmental flows advisory group the
19 first biennial report on the implementation and effectiveness of
20 environmental flow standards under Section 11.1471(g), Water Code,
21 as added by this Act, not later than January 1, 2024.

22 (b) The environmental flows advisory group shall produce
23 and deliver to the commission the first biennial statewide work
24 plan developed under Section 11.02363, Water Code, as added by this
25 Act, not later than January 1, 2025.

26 SECTION 24. This Act takes effect September 1, 2023.