

By: Zwiener

H.B. No. 4116

A BILL TO BE ENTITLED

AN ACT

relating to a voluntary financial assurance program for permit holders under the Texas Pollutant Discharge Elimination System.

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

SECTION 1. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.054 to read as follows:

Sec. 26.054. VOLUNTARY FINANCIAL ASSURANCE PROGRAM. (a)
In this section, "permit holder" means the holder of a permit to
discharge effluent into any body of water under the NPDES.

(b) The commission shall establish a program to allow a
permit holder to deposit with the commission an amount of money or
evidence of equivalent financial assurance to be held by the
commission to be used in the event the permit holder causes a
discharge that violates the terms of the agreement described by
Subsection (c).

(c) The program established under this section shall
require an agreement between the permit holder and interested
parties in the community affected by the facility or proposed
facility. The agreement may be entered into at any time before the
issuance of the relevant NPDES permit. An agreement under this
subsection:

(1) must include provisions allowing for the
cancellation of the agreement and return of the financial assurance
to the permit holder in the event that a party that is not a party to

the agreement seeks to demand a contested case regarding the NPDES permit that is the subject of the agreement;

(2) may only include provisions that restrict discharge that specify:

(A) the amount of discharge allowed;

(B) the frequency of discharge allowed; and

(C) the minimum flow that must be present in order for a discharge to be allowed; and

(3) must include:

(A) the total amount of financial assurance; and

(B) specific amounts to be deducted if the permit holder violates a provision of the agreement.

(d) The commission shall adopt rules necessary to implement the program created under this section, including establishing the types of financial assurance to be deposited under Subsection (b), including:

(1) payment bonds; and

(2) letters of credit.

(e) The duration of the financial assurance under Subsection (d) must extend at least for the duration of the term of the discharge permit held by the permit holder, including any amendment.

(f) If the permit holder does not comply with the terms of the agreement, money may be withdrawn from the financial assurance according to commission rule. The money shall be deposited to the credit of the Texas water resources fund for use in the green project reserve program administered by the board.

1 (g) A party to an agreement under this section that is not a
2 permit holder is an affected person for the purpose of Section
3 26.028. Notwithstanding any other law, and in accordance with
4 NPDES program requirements, the renewal of an NPDES permit that is
5 the subject of an agreement under this section may be the subject of
6 a contested case hearing, including an agreement under which a
7 complete drawdown of the financial assurance has occurred.

8 SECTION 2. This Act takes effect September 1, 2019.