

BILL ANALYSIS

Senate Research Center

S.B. 1719
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Landfills can negatively impact public health and the environment if they are not properly designed, operated, and monitored according to state and federal law. The Texas Commission on Environmental Quality's (TCEQ) permitting process helps to ensure that only solid waste disposal facilities that meet standards are built in Texas. Some applicants, however, do not apply in good faith. Instead of conducting due diligence and filing a well-researched permit with minimal or no deficiencies, these applicants wait for TCEQ to identify deficiencies in the permit application and then address them via filing amendments to the permit. Filing fees for non-hazardous landfill permits are set at just \$100 and municipal solid waste landfills at \$2,000 for permits and major amendments, an extremely low cost considering that designing a municipal solid waste landfill can cost from \$750,000 to more than a million dollars. These fees provide very little incentive to ensure that the permit does not need amending later on in the process. What's more, if an applicant provides misleading information in association with their application, TCEQ could deny the application but not enforce much stricter penalties.

S.B. 1719 would authorize TCEQ to impose penalties on any applicant who files a permit for a solid waste facility in bad faith with the amount of the penalty to be determined via rulemaking considering the nature of the bad faith conduct, the harm caused by the conduct, and any prior violations by the applicant. It also would require TCEQ to impose reasonable fees for filing amendments permits, except for the first amendment, and to adjust permit fees annually based on the consumer price index. What's more, it would direct TCEQ to deny a permit if it is found, after notice and hearing, that the applicant made a materially false or misleading statement in connection with a permit application. TCEQ would have to deny, too, a permit in which the applicant filed more than three amendments and any permit application that is not administratively complete five years after the day it was submitted originally. These changes would discourage permit applicants from filing in bad faith or providing materially false information, update filing fees, and ensure that taxpayer dollars are not spent on reviewing amendment after amendment to the same application.

As proposed, S.B. 1719 amends current law relating to the permitting processes of the Texas Commission on Environmental Quality.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 361.064, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 361.064, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Authorizes the Texas Commission on Environmental Quality (TCEQ) to impose penalties on any applicant who files an application in bad faith, with the amount of the penalty to be determined by rulemaking considering the nature of the bad faith conduct, the harm caused by the conduct, and any prior violations by the applicant in determining the penalty.

(d) Requires TCEQ to impose reasonable fees for filing amendments to permits, except that the first amendment filed for the same application is prohibited from having any associated filing fees. Requires that such fees be based on the actual cost to TCEQ to process the amendments.

(e) Requires that any fees associated with an application for a permit under Section 361.061 (Permits; Solid Waste Facility), notwithstanding any other provision of law, be adjusted annually by TCEQ to reflect the cost of inflation as determined by the consumer price index.

SECTION 2. Repealer: Section 361.089(f) (relating to requiring TCEQ, before denying a permit, to find that certain criteria are met), Health and Safety Code.

SECTION 3. Amends Section 361.089, Health and Safety Code, by adding Subsections (f) and (g) and amending Subsection (e)(2), as follows:

(e) Deletes existing Subdivision (2) authorizing TCEQ to deny an original or renewal permit if it is found, after notice and hearing, that the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to TCEQ, its officers, or its employees. Redesignates existing Subdivisions (3) and (4) as Subdivisions (2) and (3).

(f) Requires TCEQ to deny an original or renewal permit if it is found, after notice and hearing, that the permit holder or applicant made a materially false or misleading statement in connection with an original or renewal application, either in the formal application or any other written instrument relating to the application submitted to TCEQ, its officers, or its employees.

(g) Requires TCEQ to deny an original or renewal permit:

(1) if the permit holder or applicant files more than three amendments to the same application; or

(2) five years after the day the application for a permit is submitted if the application is not administratively complete under Section 361.068 (Administratively Complete Application).

(h) Makes no changes to this subsection.

SECTION 4. Effective date: September 1, 2023.