By:  Schwertner, et al. S.B. No. 1397

(In the Senate - Filed March 1, 2023; March 16, 2023, read first time and referred to Committee on Natural Resources & Economic Development; April 11, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 11, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Birdwell        X

Zaffirini       X

Alvarado        X

Blanco          X

Hancock         X

Hughes          X

Kolkhorst       X

Miles           X

Sparks          X

COMMITTEE SUBSTITUTE FOR S.B. No. 1397 By:  Hancock

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 361.0666(d), Health and Safety Code, is amended to read as follows:

(d)  The published notice may not be smaller than 96.8 square centimeters or 15 square inches, with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:

(1)  the permit application number;

(2)  the applicant's name; and

(3)  the proposed location of the facility[~~; and~~

[~~(4)  the location and availability of copies of the application~~].

SECTION 2.  Section 361.0791(f), Health and Safety Code, is amended to read as follows:

(f)  The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(1)  the permit application number;

(2)  the applicant's name; and

(3)  the proposed location of the facility[~~; and~~

[~~(4)  the location and availability of copies of the permit application~~].

SECTION 3.  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 standard permit under Section 382.05195, [~~or~~] 382.05198, or 382.051985; or

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

SECTION 4.  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:

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

(B)  is operating under:

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

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

(iii)  an exemption allowed under Section 382.057.

SECTION 5.  Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.051985 to read as follows:

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

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

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

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

SECTION 6.  Section 382.056, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (k-2) to read as follows:

(b)  The notice must include:

(1)  a description of the location or proposed location of the facility or federal source;

(2)  [~~the location at which a copy of the application is available for review and copying as provided by Subsection (d);~~

[~~(3)~~]  a description, including a telephone number, of the manner in which the commission may be contacted for further information;

(3) [~~(4)~~]  a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(4) [~~(5)~~]  a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission;

(5) [~~(6)~~]  a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(6) [~~(7)~~]  the time and location of any public meeting to be held under Subsection (e); and

(7) [~~(8)~~]  any other information the commission by rule requires.

(k-2)  Notwithstanding any other law, if the commission holds a public meeting for a permit application for which consolidated notice was issued under this subchapter, the commission shall hold open the public comment period and the period for which a contested case hearing may be requested for the permit application for at least 36 hours after the end of the meeting.

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

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

SECTION 8.  Section 5.0535, Water Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

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

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

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

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

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

[~~(5)  the current budget for the commission;~~

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

(5) [~~(7)~~]  the requirements of:

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

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

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

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

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

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

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

SECTION 9.  Section 5.113, Water Code, is amended to read as follows:

Sec. 5.113.  COMMISSION AND STAFF RESPONSIBILITY POLICY. The commission shall develop and implement policies that clearly separate the policy-making [~~the respective~~] responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

SECTION 10.  The heading to Section 5.129, Water Code, is amended to read as follows:

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

SECTION 11.  Section 5.129, Water Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

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

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

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

SECTION 12.  Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.136 to read as follows:

Sec. 5.136.  COMMUNITY OUTREACH. The commission shall provide outreach and education to the public on participating in the permitting process under the air, waste, and water programs within the commission's jurisdiction.

SECTION 13.  Subchapter E, Chapter 5, Water Code, is amended by adding Section 5.1734 to read as follows:

Sec. 5.1734.  ELECTRONIC POSTING OF PERMIT APPLICATIONS. (a) The commission shall post on its website at the time a permit application becomes administratively complete:

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

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

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

(c)  The commission may exempt any associated materials from being posted on its website under Subsection (a) if the commission determines that:

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

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

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

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

(f)  The posting of a permit application under this section is in lieu of a requirement that a physical copy of the permit be made available in a public place.

SECTION 14.  Section 5.552(c), Water Code, is amended to read as follows:

(c)  The commission by rule shall establish the form and content of the notice.  The notice must include:

(1)  the location and nature of the proposed activity;

(2)  [~~the location at which a copy of the application is available for review and copying as provided by Subsection (e);~~

[~~(3)~~]  a description, including a telephone number, of the manner in which a person may contact the commission for further information;

(3) [~~(4)~~]  a description, including a telephone number, of the manner in which a person may contact the applicant for further information;

(4) [~~(5)~~]  a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) [~~(6)~~]  a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(6) [~~(7)~~]  the time and location of any public meeting to be held under Subsection (f); and

(7) [~~(8)~~]  any other information the commission by rule requires.

SECTION 15.  Chapter 5, Water Code, is amended by adding Subchapter M-1 to read as follows:

SUBCHAPTER M-1. PERMITTING PROCEDURES GENERALLY

Sec. 5.581.  APPLICABILITY. This subchapter applies to programs and permits arising under the air, waste, or water programs within the commission's jurisdiction.

Sec. 5.582.  MEANS OF PUBLICATION OF NOTICE. (a) Notwithstanding any other law, the commission may publish notice of a permit application by electronic means instead of by printed means.

(b)  If the commission publishes notice of a permit application by electronic means, the commission shall post the notice on the commission's website and may provide additional electronic notice through other means, including direct e-mail.

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

(d)  This section does not authorize the commission to use an electronic means of notice instead of newspaper publication or another form of notice if an applicable federal law requires a particular form of notice.

Sec. 5.583.  VIRTUAL PUBLIC MEETING. (a) Notwithstanding any other law, the commission may hold a public meeting virtually through the Internet provided that members of the public are able to participate in the meeting.

(b)  The commission shall consider and accommodate members of the public who may need assistance participating in a virtually held public meeting because of a lack of access to Internet services, particularly when there is a heightened public interest or in response to public comment.

(c)  This section does not authorize the commission to hold a public meeting virtually instead of an in-person public meeting if an applicable federal law requires an in-person public meeting.

Sec. 5.584.  TEMPORARY AND INDEFINITE PERMIT REPORTING. (a) In this section, "permit" means a permit, approval, registration, or other form of authorization required by law for a person to engage in an action.

(b)  This section does not apply to a person who holds a temporary permit or permit with an indefinite term that has a regular reporting requirement.

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

SECTION 16.  Section 5.754, Water Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

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

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

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

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

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

(3)  consider:

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

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

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

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

SECTION 17.  Section 7.052(c), Water Code, is amended to read as follows:

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

(1)  the violation involves:

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

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

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

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

SECTION 18.  Subchapter C, Chapter 7, Water Code, is amended by adding Section 7.0675 to read as follows:

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

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

(2)  is independently owned and operated; and

(3)  has fewer than 100 employees.

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

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

(2)  compliance assistance training; and

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

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

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

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

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

(1)  committed a violation that:

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

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

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

SECTION 19.  Subchapter B, Chapter 11, Water Code, is amended by adding Section 11.02363 to read as follows:

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

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

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

(3)  analyze previous environmental flow regime recommendations and standards;

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

(5)  validate or refine:

(A)  the environmental flow regime recommendations;

(B)  the environmental flow standards adopted by the commission; and

(C)  strategies to achieve the environmental flow standards.

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

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

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

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

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

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

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

(f)  An environmental flow standard or environmental flow set-aside adopted under Subsection (a) may be altered by the commission in a rulemaking process undertaken in accordance with a schedule established by the commission. The commission shall consider the review of environmental flow standards by the advisory group under Section 11.02363(a) when altering an environmental flow standard or environmental flow set-aside. In establishing a schedule, the commission shall consider the work plan developed by the advisory group under Section 11.02363(b) and the applicable work plan approved by the advisory group under Section 11.02362(p). The commission's schedule may not provide for the rulemaking process to occur more frequently than once every 10 years unless the work plans provide [~~plan provides~~] for a periodic review under Sections 11.02363(a) and [~~Section~~] 11.02362(p) to occur more frequently than once every 10 years. In that event, the commission may provide for the rulemaking process to be undertaken in conjunction with the periodic review if the commission determines that schedule to be appropriate. A rulemaking process undertaken under this subsection must provide for the participation of stakeholders having interests in the particular river basin and bay system for which the process is undertaken.

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

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

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

(A)  activities related to environmental flow standards; and

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

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

SECTION 21.  Section 49.011(b), Water Code, is amended to read as follows:

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

SECTION 22.  The following provisions are repealed:

(1)  Section 382.056(d), Health and Safety Code;

(2)  Section 5.552(e), Water Code;

(3)  Section 11.0236(m), Water Code;

(4)  Section 11.02361(g), Water Code; and

(5)  Section 11.02362(s), Water Code.

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

(b)  A member of the Texas Commission on Environmental Quality who, before the effective date of this Act, completed the training program required by Section 5.0535, Water Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 5.0535, Water Code. A member described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission held on or after December 1, 2023, until the member completes the additional training.

SECTION 24.  A permit holder subject to Section 5.584, Water Code, as added by this Act, shall first report to the Texas Commission on Environmental Quality the status of the permitted activity not later than December 31, 2024.

SECTION 25.  The change in law made by this Act to Section 7.052, Water Code, applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 26.  (a) The Texas Commission on Environmental Quality shall submit to the environmental flows advisory group the first biennial report on the implementation and effectiveness of environmental flow standards under Section 11.1471(g), Water Code, as added by this Act, not later than January 1, 2024.

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

SECTION 27.  This Act takes effect September 1, 2023.

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