

By: Schwertner, et al.

S.B. No. 1397

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the continuation and functions of the Texas Commission  
3 on Environmental Quality.

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

5 SECTION 1. Section 361.0666(d), Health and Safety Code, is  
6 amended to read as follows:

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

- 11 (1) the permit application number;  
12 (2) the applicant's name; and  
13 (3) the proposed location of the facility[~~, and~~  
14 [~~(4) the location and availability of copies of the~~  
15 ~~application~~].

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

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

- 22 (1) the permit application number;  
23 (2) the applicant's name; and  
24 (3) the proposed location of the facility[~~, and~~

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

3           SECTION 3. Section 382.05101, Health and Safety Code, is  
4 amended to read as follows:

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

- 10           (1) a permit under Section 382.0518 or 382.0519;  
11           (2) ~~[r]~~ a standard permit under Section 382.05195,  
12 ~~[or] 382.05198, or 382.051985; or~~  
13           (3) ~~[r, or]~~ a permit by rule under Section 382.05196 ~~[is~~  
14 ~~not required].~~

15           SECTION 4. Section 382.0511(c), Health and Safety Code, is  
16 amended to read as follows:

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

- 20           (1) the changes are de minimis under Section  
21 382.05101; or  
22           (2) the owner or operator:  
23               (A) has obtained a preconstruction permit or  
24 permit amendment required by Section 382.0518; or  
25               (B) is operating under:  
26                   (i) a standard permit under Section  
27 382.05195, ~~[or] 382.05198, or 382.051985;~~

1 (ii) a permit by rule under Section  
2 382.05196; or

3 (iii) an exemption allowed under Section  
4 382.057.

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

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

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

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

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

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

23 (b) The notice must include:

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

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

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

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

7           (4) ~~[(5)]~~ a description of the procedural rights and  
8 obligations of the public, printed in a font style or size that  
9 clearly provides emphasis and distinguishes it from the remainder  
10 of the notice, that includes a statement that a person who may be  
11 affected by emissions of air contaminants from the facility,  
12 proposed facility, or federal source is entitled to request a  
13 hearing from the commission;

14           (5) ~~[(6)]~~ a description of the procedure by which a  
15 person may be placed on a mailing list in order to receive  
16 additional information about the application;

17           (6) ~~[(7)]~~ the time and location of any public meeting  
18 to be held under Subsection (e); and

19           (7) ~~[(8)]~~ any other information the commission by rule  
20 requires.

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

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

1 follows:

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

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

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

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

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

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

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

21                           ~~(5) the current budget for the commission,~~

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

24                   (5) [~~(7)]~~ the requirements of:

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

27                                   ~~(B) the~~] public information, [~~law, Chapter 552,~~

1 ~~Government Code,~~  
2                   [~~(C) the~~] administrative procedure, and  
3 disclosing conflicts-of-interest [~~law, Chapter 2001, Government~~  
4 ~~Code, and~~  
5                   [~~(D) other laws relating to public officials,~~  
6 ~~including conflict-of-interest laws~~]; and  
7                   (B) other laws applicable to members of a state  
8 policy-making body in performing their duties; and  
9                   (6) [~~(8)~~] any applicable ethics policies adopted by  
10 the commission or the Texas Ethics Commission.

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

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

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

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

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

1 PUBLIC NOTICES.

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

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

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

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

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

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

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

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

26 Sec. 5.1734. ELECTRONIC POSTING OF PERMIT APPLICATIONS.

27 (a) The commission shall post on its website at the time a permit

1 application becomes administratively complete:

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

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

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

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

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

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

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

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



1 comment.

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

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

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

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

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

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

15 (3) ~~[(4)]~~ a description, including a telephone  
16 number, of the manner in which a person may contact the applicant  
17 for further information;

18 (4) ~~[(5)]~~ a description of the procedural rights and  
19 obligations of the public, printed in a font style or size that  
20 clearly provides emphasis and distinguishes it from the remainder  
21 of the notice;

22 (5) ~~[(6)]~~ a description of the procedure by which a  
23 person may be placed on a mailing list in order to receive  
24 additional information about the application;

25 (6) ~~[(7)]~~ the time and location of any public meeting  
26 to be held under Subsection (f); and

27 (7) ~~[(8)]~~ any other information the commission by rule

1 requires.

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

4 SUBCHAPTER M-1. PERMITTING PROCEDURES GENERALLY

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

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

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

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

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

26 Sec. 5.583. VIRTUAL PUBLIC MEETING. (a) Notwithstanding  
27 any other law, the commission may hold a public meeting virtually

1 through the Internet provided that members of the public are able to  
2 participate in the meeting.

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

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

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

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

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

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

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

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

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

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

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

10 (3) consider:

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

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

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

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

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

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

1 exceed \$40,000 a day if:

2 (1) the violation involves:

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

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

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

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

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

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

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

23 (2) is independently owned and operated; and

24 (3) has fewer than 100 employees.

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

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

3           (2) compliance assistance training; and

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

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

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

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

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

21           (1) committed a violation that:

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

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

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

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

3 Sec. 11.02363. PERIODIC REVIEW OF ENVIRONMENTAL FLOW  
4 STANDARDS; STATEWIDE WORK PLAN. (a) Periodically, the advisory  
5 group shall review the environmental flow standards for each river  
6 basin and bay system adopted by the commission under Section  
7 11.1471. In conducting a review of the environmental flow  
8 standards, the advisory group shall:

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

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

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

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

19 (5) validate or refine:

20 (A) the environmental flow regime  
21 recommendations;

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

24 (C) strategies to achieve the environmental flow  
25 standards.

26 (b) The advisory group shall develop a biennial statewide  
27 work plan to prioritize and schedule the review of environmental

1 flow standards under Subsection (a). The work plan must establish:

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

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

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

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

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

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

16 (f) An environmental flow standard or environmental flow  
17 set-aside adopted under Subsection (a) may be altered by the  
18 commission in a rulemaking process undertaken in accordance with a  
19 schedule established by the commission. The commission shall  
20 consider the review of environmental flow standards by the advisory  
21 group under Section 11.02363(a) when altering an environmental flow  
22 standard or environmental flow set-aside. In establishing a  
23 schedule, the commission shall consider the work plan developed by  
24 the advisory group under Section 11.02363(b) and the applicable  
25 work plan approved by the advisory group under Section 11.02362(p).  
26 The commission's schedule may not provide for the rulemaking  
27 process to occur more frequently than once every 10 years unless the



1 work plans provide [~~plan provides~~] for a periodic review under  
2 Sections 11.02363(a) and [~~Section~~] 11.02362(p) to occur more  
3 frequently than once every 10 years. In that event, the commission  
4 may provide for the rulemaking process to be undertaken in  
5 conjunction with the periodic review if the commission determines  
6 that schedule to be appropriate. A rulemaking process undertaken  
7 under this subsection must provide for the participation of  
8 stakeholders having interests in the particular river basin and bay  
9 system for which the process is undertaken.

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

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

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

19 (A) activities related to environmental flow  
20 standards; and

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

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

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

27 (b) The commission by rule shall establish a procedure for

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

10 SECTION 22. The following provisions are repealed:

- 11 (1) Section 382.056(d), Health and Safety Code;
- 12 (2) Section 5.552(e), Water Code;
- 13 (3) Section 11.0236(m), Water Code;
- 14 (4) Section 11.02361(g), Water Code; and
- 15 (5) Section 11.02362(s), Water Code.

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

21 (b) A member of the Texas Commission on Environmental  
22 Quality who, before the effective date of this Act, completed the  
23 training program required by Section 5.0535, Water Code, as that  
24 law existed before the effective date of this Act, is only required  
25 to complete additional training on the subjects added by this Act to  
26 the training program required by Section 5.0535, Water Code. A  
27 member described by this subsection may not vote, deliberate, or be

1 counted as a member in attendance at a meeting of the commission  
2 held on or after December 1, 2023, until the member completes the  
3 additional training.

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

8 SECTION 25. The change in law made by this Act to Section  
9 7.052, Water Code, applies only to a violation that occurs on or  
10 after the effective date of this Act. A violation that occurs  
11 before the effective date of this Act is governed by the law in  
12 effect on the date the violation occurred, and the former law is  
13 continued in effect for that purpose.

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

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

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