

- SUBJECT:** Authorizing expedited air emissions permitting and charging a fee
- COMMITTEE:** Environmental Regulation — favorable, without amendment
- VOTE:** 7 ayes — Harless, Márquez, Isaac, Kacal, E. Thompson, C. Turner, Villalba
- 0 nays
- 2 absent — Lewis, Reynolds
- SENATE VOTE:** On final passage, April 22 — 30-1 (Seliger)
- WITNESSES:** (*On House companion bill, HB 2823*)
For — Jeff Saitas and Rich Walsh, Valero Energy Corp.; Mark Vickery, Texas Association of Manufacturers; (*Registered, but did not testify:* Kathy Barber, National Federation of Independent Business-Texas; Thure Cannon, Texas Pipeline Association; June Dadrack, CenterPoint Energy; Mark Gipson, Devon Energy; Steve Hazlewood, Dow Chemical; Annie Mahoney, Texas Conservative Coalition; Warren Mayberry, DuPont; Mike Meroney, Huntsman Corp., Sherwin Alumina, BASF Corp.; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corp.; Bill Oswald, Koch Companies; Neftali Partida, Phillips 66; Steve Perry, Chevron USA; Mari Ruckel, Texas Oil and Gas Association; Lindsay Sander, Markwest Energy; Terri Seales, Ascend Performance Materials; Julie Williams, Chevron USA Inc.; Daniel Womack, Texas Chemical Council)
- Against — (*Registered, but did not testify:* Matthew Haertner, Public Citizen; Melanie Oldham; Scheleen Walker, Sierra Club Lone Star Chapter)
- On — Rodrigo Carreon; Steven Hagood, Texas Commission on Environmental Quality
- BACKGROUND:** The Texas Commission on Environmental Quality (TCEQ) issues air emission permits under the authority of Health and Safety Code, sec.

382.051.

DIGEST:

SB 1756 would authorize applicants to request TCEQ to expedite the processing of air emission permits if the applicant demonstrated that the purpose of the application would benefit the economy of the state or an area of the state.

The TCEQ executive director could grant the request for expedited processing if he or she determined that granting the request could benefit the economy. The TCEQ would prescribe the manner in which an applicant could request expedited review. The bill would authorize a surcharge, developed by rule, to already existing application fees in an amount sufficient to cover the expense of the expedited request.

The TCEQ could authorize overtime or compensatory pay or the use of contract labor to process expedited permits. The overtime or contract labor would not count be used in the agency's calculation of full-time equivalents allocated to the agency.

SB 1756 would provide that the expedited permitting process would not affect contested case hearings, or other regulatory requirements, including notice, opportunities for public hearings, and submission of public comments.

SB 1756 would require that rules adopted to implement the bill follow Government Code, ch. 2001 (Administrative Procedure). The rule(s) would have to include a provision regarding notice indicating the permit application was being processed in an expedited manner. TCEQ would be required to adopt rules as soon as practicable.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 1756 would give TCEQ added flexibility in addressing the backlog of applications for air emission permits, while ensuring that all air permits received a thorough review and the public input into the permitting process was not weakened. TCEQ has limited authority to provide expedited review through programs such as the governor's economic development program, but does not have a mechanism to recover costs, nor the ability to process a significant number of permits on an expedited

basis.

As of April 30, TCEQ had 2,548 air emission permits under review; 384 applications were exceeding the agency's internal processing timeframes, which vary depending on the type of project. Since 2007, staffing at TCEQ's air permitting division has decreased while the workload, due in part to new oil and gas exploration and economic growth, has increased dramatically. The number of projects since 2007 has increased by 50 percent and is projected to double from the 2007 levels in fiscal 2013. TCEQ has in the past used outside contractors to address permitting backlogs.

The bill would allow TCEQ to develop rules so that permit applicants could apply for expedited permitting and pay a surcharge. Funds from the surcharge would be used to pay overtime or hire contractors to handle the request for expedited process.

SB 1756 would benefit small businesses. Most of the applicants for expedited review are expected to be large businesses seeking expedited review of facilities worth tens of millions of dollars. The bill, by allowing TCEQ to bring additional resources to permit those large projects, would free up other resources to address the needs of smaller applicants, who often get a "permit by rule." Louisiana reduced its air emissions permitting backlog by implementing a similar expedited air permitting option.

Nothing in HB 1756 would undermine the public's existing rights to participate in the permitting process. Expedited permits would have the same notice and contested case requirements as existing permits. TCEQ would have to develop rules that provided notice that a permit was undergoing expedited permitting as part of its existing notice requirements.

**OPPONENTS
SAY:**

Giving TCEQ expedited permitting authority for air emissions permits could harm small businesses applying for air permits. It is likely that only large companies would apply for expedited permitting, potentially diverting resources from the processing of other air permits, specifically from those who could not afford to pay for the expedited permitting fee.

TCEQ air quality permitting staff should be funded, and all fees adjusted, at levels to maintain a permitting staff that is capable of addressing the state's air permitting backlog. Doing so, through the appropriations

process, would help ensure that all permits were treated equally. The proposed mechanism of allowing the expedited permit surcharge fees to supplement employee overtime could create the unintended consequence of employees failing to give the permit applications a thorough review due to the financial incentive provided by the payment of compensatory time.

NOTES:

The House companion, HB 2823 by Villalba, was left pending in Environmental Regulation Committee on April 9.