

- SUBJECT:** Consolidating public notice requirements for certain permit applications
- COMMITTEE:** Environmental Regulation — favorable, without amendment
- VOTE:** 7 ayes — Pickett, Cyrier, Dale, Kacal, Landgraf, Reynolds, E. Rodriguez
0 nays
2 absent — E. Thompson, Lozano
- SENATE VOTE:** On final passage, April 5 — 26-4 (Garcia, Menéndez, Uresti, Watson)
- WITNESSES:** No public hearing
- BACKGROUND:** Health and Safety Code, ch. 382 is the Texas Clean Air Act. Sec. 382.056(a) requires an applicant for a preconstruction permit of a facility that may emit air contaminants to publish a notice of intent to obtain the permit, permit amendment, or permit renewal review within 30 days of the Texas Commission on Environmental Quality (TCEQ) determining the permit application is administratively complete. Sec. 382.056(g) describes certain notice requirements for when TCEQ issues a preliminary decision for a preconstruction permit after conducting a technical review of the application.
- A 30-day comment period follows each notice.
- DIGEST:** SB 1045 would allow a preconstruction permit applicant to consolidate the notice of intent required under Health and Safety Code, sec. 382.056(a) and the notice of the preliminary decision described by subsection (g) into a single notice under certain circumstances. The notices could be consolidated if:
- the Texas Commission on Environmental Quality (TCEQ) had determined an application was administratively complete within 15 days of receiving it; and
 - the preliminary decision and draft permit related to the application

were available when TCEQ determined an application was administratively complete.

The bill would take effect September 1, 2017, and would apply only to an application for a permit that was filed on or after that date.

**SUPPORTERS
SAY:**

SB 1045 would consolidate public notice requirements to make public input on preconstruction permitting applications for facilities that may emit air contaminants more effective and would make the notice process more efficient for those applying for such permits.

Public participation. SB 1045 would make the comment period more meaningful for the public by consolidating the required preconstruction permit application notices. It also would make a draft permit available from the beginning of the comment period, which would make public participation in the comment process more informed and specific. This would reduce the burden on businesses seeking air permit applications by eliminating the duplicative costs of publishing notice.

Contested case hearing. The bill would make members of the public less likely to inadvertently lose their ability to oppose permits in contested case hearings. Contested case hearings currently must be requested during the initial public comment period, but individuals sometimes wait to request a hearing until the public comment period on the preliminary decision, when a draft permit is made available. This causes them unknowingly to lose the opportunity to request a contested case hearing.

Applicable permits. SB 1045 would apply only to permits that were simple and relatively routine. The Texas Commission on Environmental Quality (TCEQ) has identified multiple types of permits that would qualify for consolidating the notice periods, and none concern major sources of pollution. Review of applications for major sources of pollution also would almost certainly take TCEQ longer than the 15-day period under the bill to qualify for the shortened notice process.

Case-by-case permit evaluation. TCEQ would continue to evaluate each

permit application on a case-by-case basis to determine if a facility would use the best available control technology, as required by state law under Health and Safety Code, sec. 382.0518(b). This would ensure compliance with the federal Clean Air Act's requirement for case-by-case analyses.

OPPONENTS
SAY:

Public participation. SB 1045 would limit public participation in the air permit application process by eliminating one of the required comment periods under some circumstances. This would restrict the time the public had to ask questions, give input, ask for public hearings, or request a contested case hearing, which could result in less thorough review of applications.

The bill would deprive the public of a chance to comment on an application before the permit was drafted. It could allow portions of a draft permit to be prepared behind closed doors and completed before an application was formally submitted, which could make it more difficult for the public to raise questions about an application prior to TCEQ drafting the permit. The bill would reduce the significance of public input by allowing public comment only after a permit draft was complete, when it is often harder to make changes. Public input on the front end of the permit-drafting process also benefits TCEQ by providing the agency with valuable information.

Applicable permits. SB 1045 would not just consolidate notice process requirements for minor pollution sources. The only requirement for an application to qualify for the consolidated notice process would be that the commission be able to complete the draft permit within 15 days. This would allow applicants, possibly even those seeking permits for major sources of pollution, to have notice requirements consolidated if their draft permits could be finished within that time.

Case-by-case evaluation. The bill would create a chance of TCEQ not applying a case-by-case analysis of best available control technology to each preconstruction permit application. Not applying a true case-by-case assessment could subvert the federal Clean Air Act.