

- SUBJECT:** Authorizing TCEQ to issue permits for certain oil and gas discharges
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 8 ayes — Lozano, E. Thompson, Blanco, Kacal, Kuempel, Morrison, Reynolds, J. Turner
- 0 nays
- 1 absent — Zwiener
- WITNESSES:** For — Kerry Harpole, Marathon Oil; John Tintera, Texas Alliance of Energy Producers; (*Registered, but did not testify*: Scott Hutchinson, Association of Electric Companies of Texas; Price Ashley, Cheniere Energy; Steve Perry, Chevron USA; Teddy Carter, Devon Energy; Caleb Troxclair, EOG Resources, Parsley Energy, SM Energy; Hugo Gutierrez, Marathon Oil Company; Kinnan Golemon, Shell Oil Company; Bill Stevens, Texas Alliance of Energy Producers; Ryan Paylor, Texas Independent Producers & Royalty Owners Association; Ben Seabee, The Texas Water Recycling Association; Cory Pomeroy, TXOGA)
- Against — Luke Metzger, Environment Texas; Cyrus Reed, Sierra Club Lone Star Chapter; (*Registered, but did not testify*: Adrian Shelley, Public Citizen; Rita Beving, Texas Landowners for Eminent Domain Reform)
- On — Leslie Savage, Railroad Commission of Texas; (*Registered, but did not testify*: David Galindo and Robert Martinez, Texas Commission on Environmental Quality)
- BACKGROUND:** Water Code sec. 26.131(b) authorizes the Railroad Commission to issue permits for the discharge of waste into water resulting from certain activities relating to oil, natural gas, and geothermal development.
- 33 U.S.C. sec. 1342 permits the governor of a state to submit an application to the administrator of the Environmental Protection Agency (EPA) for a delegation of authority of the National Pollutant Discharge

Elimination System to administer its own state program to issue permits for the discharge of pollutants into the water.

DIGEST:

CSHB 2771 would transfer certain responsibilities of the Railroad Commission of Texas relating to regulation of discharges of produced water, hydrostatic test water, and gas plant effluent into water resulting from the development of oil, natural gas, or geothermal resources to the Texas Commission on Environmental Quality (TCEQ). It also would transfer any obligations, contracts, property, records, and funds appropriated by the Legislature relating to such regulation.

The Railroad Commission would continue to carry out duties related to such regulation until the regulatory authority of the National Pollutant Discharge Elimination System (NPDES) was delegated to TCEQ.

TCEQ would be permitted to act to ensure an orderly transfer of powers relating to the bill, including hiring employees and amending its memorandum of understanding with the Railroad Commission.

TCEQ would be required to submit to the U.S. Environmental Protection Agency by September 1, 2020, a request to supplement or amend the Texas Pollutant Discharge Elimination System to include delegation of NPDES permit authority for the discharge of oil and gas wastes to TCEQ.

The bill would take effect September 1, 2019, and would apply to an application pending on or after the effective date of the delegation of permit authority from NPDES to TCEQ.

**SUPPORTERS
SAY:**

CSHB 2771 would simplify the permit application process for pollutant discharges related to oil, gas, and geothermal development by putting all permitting under the purview of the Texas Commission on Environmental Quality (TCEQ). It would accomplish this by transferring jurisdiction of these types of pollutant discharges from the Texas Railroad Commission to the TCEQ and then allowing TCEQ to seek authority from the Environmental Protection Agency (EPA) to also issue Texas Pollutant Discharge Elimination System permits.

The bill would simplify the permitting process. Currently, entities must go to the EPA to receive federal permits and to the Railroad Commission to receive state permits. Transferring this authority to TCEQ would allow it to issue one permit directly rather than requiring entities to apply for two permits for the same activity. The EPA would still have final authority on whether to delegate this authority to TCEQ.

TCEQ currently has federal regulatory authority over pollutant discharges, with the exception of discharges associated with oil, gas, and geothermal exploration. The agency has the resources and institutional knowledge to wield the regulatory authority laid out in the bill. Transferring the Railroad Commission's water discharge permit authority to the agency already dedicated to regulating environmental quality is a sensible approach to simplifying the permit process.

OPPONENTS
SAY:

CSHB 2771 would increase the likelihood of oil and gas companies being permitted to discharge wastewater into Texas rivers and streams.

Currently, EPA rules prohibit direct discharges into rivers except under specific circumstances. The EPA is currently studying the issue, but this bill would seek permission to allow discharges before that study is complete. This bill would allow oil and gas interests to circumvent this review by requesting permit authority be delegated to the state level. Texas should not seek delegation authority before the EPA establishes national standards for such discharges.

NOTES:

The author plans to offer an amendment that would remove the reference to "all funds appropriated by the Legislature for that power, duty, function, program, or activity" transferred under the bill from the Railroad Commission to the Texas Commission on Environmental Quality.

According to the Legislative Budget Board, the bill would have no impact on general revenue related funds through fiscal 2020-21, but would cause increases and decreases to general revenue-dedicated accounts.