

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1495  
By: Bivins  
Natural Resources  
4-14-97  
Committee Report (Substituted)

### **DIGEST**

Currently, notice requirements for permits issued by the Texas Natural Resource Conservation Commission (commission) are scattered throughout dozens of statutes in the Water Code and the Health and Safety Code. Since most programs have unique notice requirements, it is often difficult for applicants to ensure that they are complying with all notice requirements that apply to their permits. This bill puts all public notice requirements for the commission permits in one chapter of the Water Code to assist applicants and the public in determining the applicable notice requirements.

### **PURPOSE**

As proposed, C.S.S.B. 1495 puts all public notice requirements for the Texas Natural Resource Conservation Commission permits in one chapter of the Water Code to assist applicants and the public in determining the applicable notice requirements.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Section 5.402, 5.408, 5.409, 5.410, and 5.416 Water Code) and SECTION 16 (382.0561(d), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### **SUBCHAPTER J. NOTICE REQUIREMENTS**

SECTION 1. Amends Chapter 5, Water Code, by adding Subchapter J, as follows:

Sec. 5.401. **APPLICABILITY.** Sets forth the applicability of this subchapter.

Sec. 5.402. **MINIMUM REQUIREMENTS.** Provides that notice provisions for this subchapter are minimum requirements. Requires the Texas Natural Resource Conservation Commission (commission) to adopt rules consistent with this subchapter and may establish additional requirements.

Sec. 5.403. **SUBSTANTIAL COMPLIANCE.** Provides that substantial compliance with the requirements of this subchapter is sufficient for the commission to exercise jurisdiction over an application. Provides that inadvertent failure to mail notice to a navigation district that is not a claimant or appropriator of water does not prevent the commission's consideration of the application.

Sec. 5.405. **NOTICE TO SENATOR AND REPRESENTATIVE.** Sets forth notice requirements for a local state senator or representative regarding solid waste or air quality permits.

Sec. 5.406. **NOTICE OF RECEIPT OF ADMINISTRATIVELY COMPLETE APPLICATION.** Sets forth notice requirements for notice of receipt of application. Sets forth requirements for publication in the Texas Register. Requires mailed notice to the applicant and any interested party who has requested notification, unless it would be impractical, in which case the commission must publish in a newspaper. require notice to the

School Land Board if lands dedicated to the permanent school fund will be affected.

Sec. 5.407. NOTICE OF PUBLIC MEETING FOR SOLID WASTE PERMIT. Requires an applicant to publish notice in a newspaper for certain solid waste public meetings.

Sec. 5.408. NOTICE OF APPLICATION AND OPPORTUNITY TO REQUEST A HEARING. Requires notice of hearing and opportunity to request a hearing to be given in certain manners. Sets forth requirements for publication in the Texas Register. Sets forth duties of an applicant under this section regarding notice. Require the commission to adopt certain rules necessary to administer this section.

Sec. 5.409. NOTICE OF HEARING. Sets forth notice requirements for a notice of a hearing. Requires the commission to adopt rules regarding notice.

Sec. 5.410. TIMING OF NOTICES. Requires the commission, by rule, to prescribe when notice of intent to obtain a municipal solid waste permit is to be published. Sets forth requirements for timing of notices. Require the commission, by rule, to prescribe when notice for air quality permits must be published regarding bilingual newspapers.

Sec. 5.411. CONTENTS OF NOTICE. Sets forth requirements for the contents of notices.

Sec. 5.412. PROOF OF NOTICE. Sets forth requirements regarding proofs of notice.

Sec. 5.413. MAILED NOTICE. Sets forth requirements of mailed notices.

Sec. 5.414. MAILING LIST. Requires mailed notices to be sent to certain persons. Authorizes additional notices to be sent for certain items.

Sec. 5.415. NEWSPAPER PUBLICATION; SIGN POSTING. Sets forth requirements of notices to be published in a newspaper. Sets forth requirements for sign posting.

Sec. 5.416. BILINGUAL NEWSPAPER PUBLICATION. Sets forth applicability of this section. Sets forth requirements for publishing notice in a bilingual newspaper. Authorizes the commission, by rule, to require publication of additional notice.

SECTION 2. Amends Section 5.115, Water Code, to delete Subsections (b)-(f). Makes conforming changes.

SECTION 3. Amends Sections 11.085(b), Water Code, to make a conforming change.

SECTION 4. Amends Section 11.132, Water Code, to delete a provision relating to an application. Deletes existing Subsections (b), (c), (d)(1)-(3) and (e). Makes a conforming change.

SECTION 5. Amends Section 11.143(d)-(i), Water Code, to delete existing Subsections (d)(1)-(3), (e), and (f). Makes conforming changes.

SECTION 6. Amends Section 11.175, Water Code, as follows:

Sec. 11.175. New heading: NOTICE OF CANCELLATION HEARING. Deletes previous Subsections (a) and (b). Requires notice to be mailed and published. Makes a conforming change.

SECTION 7. Amends Section 26.022, Water Code, to delete previous Subsections (b) and (c). Makes conforming changes.

SECTION 8. Amends Sections 26.028(a), (b), and (d), Water Code, as follows:

Sec. 26.028. ACTION ON APPLICATION. Deletes a provision concerning notice requirements. Deletes Subsections (d)(1)-(3). Makes conforming changes.

SECTION 9. Amends Sections 27.018(c) and (d), Water Code, to delete existing Subsection (c). Makes a conforming change.

SECTION 10. Amends Sections 361.079(a) and (c), Health and Safety Code, to make conforming changes.

SECTION 11. Amends Sections 361.0791(c) and (e)-(g), Health and Safety Code, to delete provisions regarding notice. Makes conforming changes.

SECTION 12. Amends Section 361.080(b), Health and Safety Code, to make a conforming change.

SECTION 13. Amends Section 361.081, Health and Safety Code, to delete provisions regarding notice. Makes conforming changes.

SECTION 14. Amends Sections 361.082(c) and (d), Health and Safety Code, to make conforming changes.

SECTION 15. Amends Sections 382.031, 382.0516, and 382.056, Health and Safety Code, as follows:

Sec. 382.031. NOTICE OF HEARINGS. Deletes provisions regarding publication in newspapers. Deletes existing Subsections (b), (c), and (e). Makes conforming changes.

Sec. 382.0516. NOTICE TO STATE SENATOR AND REPRESENTATIVE. Deletes text regarding a construction and a special permit.

Sec. 382.056. New heading: NOTICE OF APPLICATION AND OPPORTUNITY TO REQUEST A HEARING. Deletes text regarding publishing notice and existing Subsections (b) and (c). Makes conforming changes.

SECTION 16. Amends Section 382.0561, Health and Safety Code, by amending Subsections (b)-(i) and adding Subsections (j)-(u), to set forth notice requirements for an application for a federal operating permit. Requires the commission to adopt rules governing notice. Authorizes the commission or its designee to extend or reopen the comment period if the commission or its designee, rather than executive director, finds an extension or reopening to be appropriate. Authorizes the commission, by rule, to require to an applicant for a federal operating permit to publish certain notice. Sets forth notice requirements. Deletes existing Subsection (f). Makes conforming changes.

SECTION 17. Amends Sections 382.058(a) and (c), Health and Safety Code, to make a conforming change.

SECTION 18. Amends Section 401.113(b), Health and Safety Code, to provide an analysis to be made available to the public no later than the 30th, rather than the 31st, day before the date of the hearing under Section 401.114, Health and Safety Code.

SECTION 19. Amends Sections 401.114, Health and Safety Code, to delete certain notice requirements. Make conforming changes.

SECTION 20. Amends Section 401.116, Health and Safety Code, by amending Subsections (b)-(d), and adding Subsection (e), to make conforming changes.

SECTION 21. Amends Section 401.263(c), Health and Safety Code, to make a conforming change.

SECTION 22. Repealer: Sections 361.0641 and 361.083, Health and Safety Code (Notice to senator and representative and Evidence of notice hearing, respectively).

SECTION 23. Makes application of this Act prospective.

SECTION 24. Effective date: September 1, 1997.

SECTION 25. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

#### SECTION 1.

Deletes proposed SECTION 1. SECTION 1 is renumbered to contain all of new Subchapter J.

Amends Section 5.401, Water Code, to set forth applicability of the subchapter.

Amends Sections 5.404-5.409, Water Code, to set forth types of notices.

Amends Section 5.410, Water Code, to require the commission, by rule, to prescribe when notice of intent to obtain a municipal solid waste permit is to be published. Sets forth requirements for timing of notices. Require the commission, by rule, to prescribe when notice for air quality permits must be published regarding bilingual newspapers.

Amends Section 5.411, Water Code, to set forth requirements for the contents of notices.

Amends Section 5.412, Water Code, to set forth requirements regarding proofs of notice.

Amends Section 5.413, Water Code, to set forth requirements of mailed notices.

Amends Section 5.414, Water Code, to require mailed notices to be sent to certain persons. Authorizes additional notices to be sent for certain items.

Amends Section 5.415, Water Code, to set forth requirements of notices to be published in a newspaper. Sets forth requirements for sign posting.

Amends Section 5.416, Water Code, to set forth applicability of this section. Sets forth requirements for publishing notice in a bilingual newspaper. Authorizes the commission, by rule, to require publication of additional notice.

#### SECTION 2.

Amends Section 5.115, Water Code, to delete Subsections (b)-(f). Makes conforming changes.

#### SECTION 3.

Amends Sections 11.085(b), Water Code, to make a conforming change.

#### SECTION 4.

Amends Section 11.132, Water Code, to delete a provision relating to an application. Deletes existing Subsections (b), (c), (d)(1)-(3) and (e). Makes a conforming change.

#### SECTION 5.

Amends Section 11.143(d)-(i), Water Code, to delete existing Subsections (d)(1)-(3), (e), and (f). Makes conforming changes.

#### SECTION 6.

Amends Section 11.175, Water Code, by amending the heading and to delete existing Subsections (a) and (b). Requires notice to be mailed and published. Makes a conforming change.

SECTION 7.

Amends Section 26.022, Water Code, to delete existing Subsection (b) and(c). Makes conforming changes.

SECTION 8.

Amends Sections 26.028(a), (b), and (d), Water Code, to delete a provision concerning notice requirements. Deletes Subsections (d)(1)-(3). Makes conforming changes.

SECTION 9.

Amends Sections 27.018(c) and (d), Water Code, to delete existing Subsection (c). Makes a conforming change.

SECTION 10.

Amends Sections 361.079(a) and (c), Health and Safety Code, to make conforming changes.

SECTION 11.

Amends Sections 361.0791(c) and (e)-(g), Health and Safety Code, to delete provisions regarding notice. Makes conforming changes.

SECTION 12.

Amends Section 361.080(b), Health and Safety Code, to make a conforming change.

SECTION 13.

Amends Section 361.081, Health and Safety Code, to delete provisions regarding notice. Makes conforming changes.

SECTION 14.

Amends Sections 361.082(c) and (d), Health and Safety Code, to make conforming changes.

SECTION 15.

Amends Sections 382.031, 382.0516, and 382.056, Health and Safety Code, as follows:

Sec. 382.031. NOTICE OF HEARINGS. Deletes provisions regarding publication in newspapers. Deletes existing Subsection (b), (c), and (e). Makes conforming changes.

Sec. 382.0516. NOTICE TO STATE SENATOR AND REPRESENTATIVE. Deletes text regarding a construction and special permit.

Sec. 382.056. New heading: NOTICE OF APPLICATION AND OPPORTUNITY TO REQUEST A HEARING. Deletes text regarding publishing notice and existing Subsections (b) and (c). Makes conforming changes.

SECTION 16.

Amends Section 382.0561, Health and Safety Code, by amending Subsection (b)-(i) and adding Subsections (j)-(u), to set forth notice requirements for an application for a federal

operating permit. Requires the commission to adopt rules governing notice. Authorizes the commission or its designee to extend or reopen the comment period if the commission or its designee, rather than executive director, finds an extension or reopening to be appropriate. Authorizes the commission, by rule, to require to an applicant for a federal operating permit to publish certain notice. Sets forth notice requirements. Deletes existing Subsection (f). Makes conforming changes.

#### SECTION 17.

Deletes proposed SECTION 17. Amends Sections 382.058(a) and (c), Health and Safety Code, to make a conforming change.

#### SECTION 18.

Deletes proposed SECTION 18. Amends Section 401.113(b), Health and Safety Code, to provide an analysis to be made available to the public no later than the 30th, rather than the 31st, day before the date of the hearing under Section 401.114, Health and Safety Code.

#### SECTION 19.

Amends Sections 401.114, Health and Safety Code, to delete certain notice requirements. Make conforming changes.

#### SECTION 20.

Amends Section 401.116, Health and Safety Code, by amending Subsections (b)-(d), and adding Subsection (e), to make conforming changes.

#### SECTION 21.

Amends Section 401.263(c), Health and Safety Code, to make a conforming change.

#### SECTION 22.

Amends SECTION 22 to repeal Sections 361.0641 and 361.083, Health and Safety Code (Notice to senator and representative and Evidence of notice hearing, respectively).

#### SECTION 23.

Amends SECTION 23 to make application of this Act prospective.

#### SECTIONS 24 and 25.

Redesignates proposed SECTIONS 24 and 24 as SECTIONS 24 and 25.