

SUBJECT: Exempting portable facilities from public notice requirements

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Bonnen, Kuempel, Crownover, Chisum, W. Smith, West
0 nays
1 absent — Flores

WITNESSES: For — *(Registered but did not testify:)* Lance Lively, AGC; Linda Sickels, Trinity Industries; Michael Stewart, Texas Aggregates and Concrete Association; Jill Warren, Jobe Concrete
Against — None

BACKGROUND: Health and Safety Code, sec. 382.056 requires an applicant for a preconstruction air-emissions permit to publish a notice of intent to obtain a permit, permit amendment, or permit review. The applicant must publish notice in a general-circulation newspaper of the nearest municipality. In response to the notice, a person may ask the Texas Commission on Environmental Quality (TCEQ) to hold a public hearing on the permit application.

Exempted from the public notice requirement is a portable facility that is relocating to a site where a facility permitted by the commission is located if no portable facility has been located there within the two previous years. “Portable facility” includes a portable concrete batch plant, portable asphalt plant, or portable rock crusher.

DIGEST: CSHB 555 would exempt a portable facility from notice requirements under Health and Safety Code, sec. 382.056 if it moved to a site where a portable facility had been located at any time during the previous two years.

The 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, 2003.

**SUPPORTERS
SAY:**

CSHB 555 would correct an error in HB 2912, the sunset bill for the Texas Natural Resource Conservation Commission (now TCEQ) enacted by the 77th Legislature. Language in HB 2912 was intended to exempt a portable facility, such as a portable concrete batch plant, from public notice requirements for a permit application if it were moving to a site where it had been located within the past two years. By error, the wording of the legislation had the opposite effect: exempting such a facility from notice requirements if it were moving to a site where it had been located more than two years before.

The current statute puts an undue burden on facility owners and operators by requiring them to provide public notice each time they relocate their facility to a previous site. CSHB 555 would correct this error so that current law reflects the 77th Legislature's intent.

**OPPONENTS
SAY:**

CSHB 555 would chip away at the public's right to be notified of what is happening in their communities. Facilities such as concrete batch plants or rock crushers, whether portable or not, are a nuisance to neighborhoods and communities. The proposed exemption could allow a portable cement batch plant to move back into a community without notice, catching unaware residents who had opposed the facility more than a year previously and thought they were rid of the facility when it moved away.

The bill would not restrict the public notice exemption to a portable facility moving to a site where it specifically had been located within the past two years. Thus, the bill could allow a loud or especially obnoxious portable facility to move without public notice to a site previously occupied by another, but less offensive, portable facility.

NOTES:

The committee substitute modified the original bill by changing "portable facility permitted by the commission" to "portable facility."

The companion bill, SB 621 by Armbrister, has been referred to the Senate Natural Resources Committee.