

- SUBJECT:** Public notice and comment on permits for pollution control projects
- COMMITTEE:** Environmental Regulation — favorable, without amendment
- VOTE:** 5 ayes — W. Smith, Aliseda, Chisum, Legler, Lyne
3 nays — Farrar, Burnam, Reynolds
1 absent — Hancock
- WITNESSES:** For — Walt Baum, Association of Electric Companies of Texas; Stephen Minick, Texas Association of Business; Mike Nasi, American Coalition for Clean Coal Electricity (ACCCE); (*Registered, but did not testify:* Chesley Blevins, Kiewit Mining Group, Inc., Texas Mining and Reclamation Association, and Texas Westmoreland Coal Co.; Gary Gibbs, American Electric Power Co.; Usha Turner, Luminant)

Against — Ken Kramer, Lone Star Chapter, Sierra Club; Ilan Levin, Environmental Integrity Project; Tom “Smitty” Smith, Public Citizen; (*Registered, but did not testify:* Karen Hadden, Sustainable Energy and Economic Development; Snehal Patel, Harris County Attorney’s Office; Matthew Tejada, Air Alliance Houston; David Weinberg, Texas League of Conservation Voters)
- BACKGROUND:** In March 2011, the Environmental Protection Agency (EPA) proposed Maximum Achievable Control Technology (MACT) standards for new and existing electric-generating facilities. The EPA is under a court order to issue final MACT standards by November 2011 and will require compliance with those standards in three to four years.

Health and Safety Code, ch. 382 is the Texas Clean Air Act. Under sec. 382.0561, the Texas Commission on Environmental Quality (TCEQ) must provide a period of public comment on an application for a new or revised federal operating permit. TCEQ must hold a public hearing on the application if a person requests this during the public comment period. However, TCEQ is not required to hold a hearing if the request is deemed unreasonable.

DIGEST: HB 3251 would require TCEQ to provide an opportunity for public hearing and public comment in the same way as provided by sec. 382.0561 of the Health and Safety Code when an electric-generating facility filed a permit amendment application to comply with new federal Clean Air Act standards.

A person affected by a TCEQ decision to issue or deny a permit could move for a rehearing and would be entitled to judicial review.

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, 2011.

**SUPPORTERS
SAY:**

All of Texas' existing coal-fueled electric-generating facilities, which currently provide about half of the electricity to the state, will be affected by the EPA's new MACT standards in November. To comply with these standards, such facilities will have to install additional emissions control equipment, which will require first obtaining permit amendments from TCEQ to authorize the installation of such equipment, and then conducting adequate planning, engineering, design, procurement, delivery, installation, and commissioning to operate the equipment.

Retrofits of this nature require significant time and manpower and must be carefully coordinated to ensure the availability of enough electricity to meet demand during the process. As such, it is important that the retrofits occur during planned seasonal outages of the electric companies, when electricity demand is lower, rather than during an unplanned time, such as the summer or winter.

HB 3251 would direct TCEQ to follow the less onerous and streamlined public hearing and comment requirements prescribed by the EPA for a permit application that was submitted by an electric company seeking to reduce emissions in order to comply with newly proposed federal standards. These requirements currently are used by EPA regardless of state involvement. This process would allow companies to reduce emissions sooner and meet the EPA compliance deadline. Expedient authorization and installation of the emissions control equipment would give the electric companies the needed flexibility to select the equipment vendors and install it during facility outages.

The bill would be limited in scope by applying only to electric company permit amendment applications to authorize the addition of emissions control equipment to comply with federal MACT standards. These permit amendment applications likely would not be contentious and would not need a contested case hearing, which can take four to five years to complete, because the emissions control equipment would significantly reduce emissions and EPA already has determined that such equipment is appropriate. Therefore, the less onerous and streamlined public hearing and public comment requirements would be appropriate for such applications.

In addition, the requirements in HB 3251 would be very similar to requirements that many other states follow. Texas should adopt the same requirements so that electric companies in Texas are not at a competitive disadvantage.

OPPONENTS
SAY:

HB 3251 is a direct response to a recent EPA action mandating new MACT standards for hazardous pollutants, particularly mercury, emitted from coal plants. HB 3251 would strip the public of the right to a trial-like contested case hearing and would reduce public participation to a typical notice-and-comment process.

Contested case hearings give citizens an opportunity for a trial-like hearing, including the opportunity to cross-examine witnesses and call experts. Such opportunities are lacking in a typical notice-and-comment process, which is limited to oral and written testimony. If a person opposing a permit application lacks the necessary expertise, he or she may not be able produce meaningful comments. Without a trial-like hearing with cross-examination, the public and TCEQ would have to rely on the utility for knowing what hazardous air pollutants they planned to emit. Having third parties intervene and review the process is beneficial to all parties. Although contested cases typically do not result in permit denials, a permit resulting from a contested case is significantly improved due to the opportunity for public participation.

HB 3251 would direct TCEQ to follow the public hearing and comment requirements process prescribed by the EPA. However, the EPA process is limited and meant to be supplemented by the state process that, in Texas, currently includes an opportunity for a contested case hearing.

OTHER
OPPONENTS
SAY:

HB 3251 may be unnecessary. Under current law, if an electric company submits a proposal to lower emissions to TCEQ, it does not need a permit amendment, but rather an alteration or a “no increase” amendment, which has limited public notice and no opportunity for a contested case.

NOTES:

According to the fiscal note, HB 3251 is not expected to significantly increase TCEQ’s workload because the number of permit amendments that would be submitted is not expected to be significant.