



# SIERRA CLUB

## LONE STAR CHAPTER

To: The Honorable Brian Birdwell, Chair  
Members, Senate Committee on Natural Resources and Economic Development  
Re: SB 1397 by Schwertner  
From: Cyrus Reed, [cyrus.reed@sierraclub.org](mailto:cyrus.reed@sierraclub.org), 512-888-9411

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### **TCEQ Sunset Bill (CSSB 1397): Sierra Club supports the bill but more is needed**

The Sierra Club was an active participant in the sunset commission process and was generally supportive of the Sunset report and the decisions of the Sunset Commission. During the public meeting, some 200 individuals, many of them from the Houston area, made the trek to the public hearing on TCEQ's sunset, as well as a number of "informal" meetings and virtual hearings with community organizations. There is a lack of trust and frustration with the TCEQ for not being responsive to the public and for not properly regulating industries in our state. As a reminder that about half the state fails to meet the basic air quality standards on urban smog, and roughly a half of the state's surface water miles are considered "impaired" because they fail to fully meet water quality standards.

The sunset report found TCEQ to be a reluctant regulator and lacking good public participation practices. Indeed, as we frequently pointing out, as an organization the Sierra Club (and other partner organizations like Environment Texas and Environmental Integrity Project) frequently take polluters to court under the Clean Air Act's citizen enforcement provisions, and have settled a number of large cases which have led to cleanups of major refineries and gas processing facilities. Simply put we have had to step in when TCEQ refused to do their job. Thus, the Sierra Club is supportive of CSHB 1397, although we believe that other issues such as those raised in separate petitions to the EPA on water and air regulations are needed.

Among the important issues we support in the Sunset bill include:

- Better public notice and posting of permit applications online;
- Potential for online, virtual public hearings;
- Improved permitting procedures and hearings, including ability to make comments up to 36 hours after a hearing ends;

- Increasing the maximum administrative fines that can be assessed against environmental law breakers from \$25,000 to \$40,000 (we support the Committee Sub language applying this to major violations)
- Allowing updates to compliance ratings to better reflect reality;
- Better training of commissioners and clarifications on management staff responsibilities.

We do believe there are a number of improvements that are needed in the bill including making it clear that an opportunity for a virtual online meeting is not in lieu of a physical meeting. In addition, we are supportive of looking at additional issues, including:

- Some clarification in Section 17 and 18 on environmental flow procedures to better align with sunset report;
- Assuring the TCEQ follows federal laws and guidelines on assessing environmental justice analysis and cumulative impact analysis, particularly on large permits and permit amendments in non-attainment areas;
- Assuring that state definition and interpretation of affected persons for contested case hearings and judicial reviews are equivalent to those under federal law;
- Assuring that the burden of proof for permits is not put unduly on protestants and allowing documentation, including witness testimony establishing that a proposed permit does not demonstrate compliance with state or federal requirements
- Adjusting the length of time for contested case hearings is extended from 180 to 270 days
- Directing TCEQ to set priorities on cleaning up its waterways through the TMDL (Total Maximum Daily Load) process and to set salinity gradient standards for water quality. The TCEQ is decades behind in prioritizing TMDLs in some areas of the state and has had narrative salinity standards for more than 20 years, without setting salinity standards.
- Allowing other state agencies - specifically the Texas Parks and Wildlife Department to contest water rights and wastewater discharge permits.

We have provided specific language to the author of the bill on these issues, and are hopeful that at least some of these issues can be addressed by the bill, or taken up through separate legislation.