

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1263  
By: Armbrister  
Natural Resources  
4/23/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

C.S.S.B. 1263 provides that the Texas Commission on Environmental Quality only has to respond to written comments during the notice and comment process; clarifies the times that a request for a contested case hearing is made; clarifies that the only person who can request a contested case hearing is a person who has participated in the full process to that point and is an affected person; tightens the requirements for issues that are referred to a contested case in response to practices that seem to currently allow broad issues to be referred; clarifies the process in the air law that currently allows an early request for hearing to stand as a request for a contested case hearing; and clarifies who can be named parties to a hearing at the State Office of Administrative Hearings.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 5.555(a), Water Code, to require the executive director, in accordance with procedures provided by the Texas Commission on Environmental Quality (TCEQ) rule, to file with the chief clerk of TCEQ a response to each relevant and material public comment on the preliminary decision filed in writing during the public comment period.

SECTION 2. Amends Section 5.556, Water Code, by amending Subsections (a), (c), and (d), and adding Subsection (g), as follows:

(a) Requires a request for reconsideration of the executive director's decision or for a contested case hearing to be filed with TCEQ after transmittal of the executive director's response to public comments and during the period provided by TCEQ rule.

(c) Prohibits TCEQ from granting a request for a contested case hearing unless TCEQ determines that the request was filed by an affected person as defined by Section 5.115 who submitted written comments during the public comment period or by a local government with authority under state law over the issues contemplated by the application upon a showing of good cause for not having submitted written comments during the comment period.

(d) Prohibits TCEQ from referring an issue to the State Office of Administrative Hearings for a hearing unless TCEQ determines certain issues.

(g) Provides that notwithstanding other law, public notice of a contested case hearing that TCEQ grants under this section is not required. Requires notice of a hearing to be provided to the applicant, the office of public interest counsel, the executive director, and the person whose hearing requests have been granted.

SECTION 3. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.0531, as follows:

Se. 382.0531. PERMITS FOR CERTAIN ROCK CRUSHERS. (a) Prohibits TCEQ from issuing a permit, permit amendment, or other authorization for a rock crushing facility associated with blasting operations if certain conditions apply.

(b) Requires TCEQ to prohibit a currently permitted rock crushing facility from being associated with blasting operations if certain conditions apply.

SECTION 4. Amends Section 382.056, Health and Safety Code, by amending Subsections (b), (g), (h), (i), (l), (m), and (n), and adding Subsections (s) and (t), as follows:

(b) Requires the notice to include certain information.

(g) Requires the applicant to publish notice of the preliminary decision in a newspaper and the commission to seek public comment on the preliminary decision in accordance with the procedures provided by Subsections (i)-(n), if, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person files a notice of contest during the period provided by TCEQ rule and the notice of contest is not withdrawn before the date the preliminary decision is issued. Prohibits, however, TCEQ from seeking further public comment or hold a public hearing in response to a notice of contest, rather than a request for a public hearing, on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Deletes text requiring TCEQ to consider the request for a certain public hearing.

(h) Requires TCEQ to consider any hearing request regarding a permit under Section 382.054, under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n). Deletes text requiring TCEQ to consider certain requests.

(i) Requires TCEQ by rule to establish the form and content of the notice of preliminary decision under Subsection (g), the manner of publication, and the duration of the public comment period. Requires the notice to include certain information.

(l) Requires the executive director, in accordance with procedures adopted by TCEQ by rule, to file with the chief clerk of TCEQ a response to each relevant and material public comment on the preliminary decision filed in writing during the public comment period.

(m) Requires the chief clerk of TCEQ to transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that TCEQ reconsider the executive director's decision or hold a contested case hearing to certain persons.

(n) Requires TCEQ, except as provided by Section 382.0561, to consider a request that TCEQ reconsider the executive director's decision or hold a contested case, rather than public hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(s) Requires any public hearing requested in response to a later public notice required solely by federal program requirements, if granted, to be conducted in accordance with Section 382.0561 and not under Chapter 2001, Government Code, if a notice of contest is not filed or is withdrawn under Subsection (g).

(t) Requires TCEQ to extend the public comment period automatically until the close of the public meetings held under Subsection (k). Prohibits TCEQ from extending the period during which a notice of contest or request for reconsideration may be filed.

SECTION 5. Amends Section 2003.047, Government Code, by adding Subsection (p) and (q), as follows:

(p) Authorize the administrative law judge, in designating parties to a hearing on a permit application, to name as parties only the executive director, the office of public interest counsel, the permit applicant, and other persons whose hearing requests have been granted by TCEQ and whose issues have been referred by TCEQ for a contested case hearing. Authorizes the executive director to participate in a contested case hearing only to the extent described in Section 5.228, Water Code.

(q) Authorizes an administrative law judge to grant a motion for a summary disposition on any or all of the issues referred for hearing and issue a proposal for decision that resolves the contested case without an evidentiary hearing or with a limited evidentiary hearing as provided by TCEQ rules.

SECTION 6. (a) Effective date: September 1, 2003.

(b) Makes application of this Act prospective.