

BILL ANALYSIS

C.S.H.B. 2963
By: Crownover
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Observers note that the length of the average period for obtaining a permit for mining and reclamation activities from the Railroad Commission of Texas continues to grow despite efforts to remedy inefficiencies and add staff and funding. It is further noted that regulated industry has agreed in the past to pay higher fees to support additional division staff to address these issues but that the additional revenue and staff have not solved the problems. The parties observe that long permit deadlines have resulted in additional costs and delays for mine operators and, if they continue to lengthen, could jeopardize the ability of Texas mining operators to timely and reliably deliver fuel to the state's coal-fueled electric generation fleet. Interested parties assert that legislation is needed to codify administrative and technical review deadlines currently set out in informal directives to ensure compliance with timelines and effect greater efficiencies in the permit review process. C.S.H.B. 2963 seeks to remedy these issues by making statutory changes relating to permit review deadlines of the surface mining reclamation division of the Railroad Commission of Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2963 amends the Natural Resources Code to remove language requiring the Railroad Commission of Texas to approve or disapprove the revision of a surface coal mining permit not later than the 90th day after the date the permit holder submits the application for revision to the commission.

C.S.H.B. 2963 requires the director of the Surface Mining and Reclamation Division of the commission, not later than the seventh day after the date the commission receives an application for a new permit or for renewal or a significant revision of a permit, to complete a review of the application to determine whether the application is complete. The bill requires the director, if the director determines that the application is complete, to file the application with the commission's office of general counsel for processing under commission rules and the Administrative Procedure Act. The bill requires the director, if the director determines that the application is not complete, to send a written notice to the applicant that identifies the specific information that the applicant must provide to the commission. The bill requires the director, not later than the seventh day after the date the commission receives the requested information, to complete another review of the application to assess the completeness of the application.

C.S.H.B. 2963 requires the director, not later than the 120th day after the date the commission receives such an application that the director determines is complete, to complete the technical review of the application and make a recommendation to approve or deny the application to the commission's office of general counsel. The bill establishes that, if the director determines that the application is deficient, the period required for completing the review of the application is

tolled until the date the commission receives the requested information from the applicant. The bill requires the director, if the director determines that the application is deficient, to send a written notice to the applicant that notifies the applicant:

- that the review period is being tolled;
- of the reason the review period is being tolled;
- of the information the applicant must submit to the commission before the commission will resume the review of the application; and
- of the number of days remaining that the commission has to review the application after the commission receives the requested information from the applicant.

C.S.H.B. 2963 authorizes the director, if the applicant submits supplemental information to the commission that is not in response to such a request for information, to extend the review period for an additional period of not more than 60 days. The bill requires the director to provide written notice to the applicant that includes the director's decision regarding whether to extend the review period, the reason for the decision, and the number of days remaining in the review period. The bill requires the director, if the director determines that an application for permit revision is not a significant departure from the approved method or conduct of mining and reclamation operations, to provide written notice to the applicant that the permit revision request has been approved or denied, not later than the 90th day after the date the commission receives a complete application. The bill establishes that, if the director makes such a determination and also determines that the application is deficient, the review period required to approve or deny the application is tolled until the date the commission receives the requested information from the applicant, and requires the director to send a written notice to the applicant that notifies the applicant:

- that the review period is being tolled;
- of the reason the review period is being tolled;
- of the information that the applicant must submit to the commission before the commission will resume the review of the revision application; and
- of the number of days remaining that the commission has to review the application after the commission receives the requested information from the applicant.

C.S.H.B. 2963 defines "director."

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2963 omits a provision included in the original setting out a statement of purpose.

C.S.H.B. 2963 differs from the original by requiring the director to complete the technical review of an application for a new permit, a renewal, or a significant revision of a surface coal mining permit not later than the 120th day after the date the Railroad Commission of Texas receives such an application and to make a recommendation to approve or deny the application, whereas the original requires the director to file documentation of the technical analysis of a new permit or a significant permit revision within 120 days and a renewal within 60 days and contact the applicant to schedule a meeting to discuss the technical analysis review findings.

C.S.H.B. 2963 contains a provision not included in the original establishing, if the director determines that an application is deficient, that the period for completing the review of the application is tolled until the date the commission receives the requested information from the

applicant, requiring the director to send a written notice to the applicant, and setting out the requirements of the notice.

C.S.H.B. 2963 differs from the original by authorizing the director, if the applicant submits supplemental information to the commission that is not in response to such a request for information, to extend the review period for an additional period of not more than 60 days, whereas the original establishes that the director, if the applicant files a supplement to the application, will follow the administrative review procedure and review the supplement and respond with an addendum to its technical analysis within 30 days of receiving an administratively complete supplement, unless a substantive revision to the proposed mining and operation plan is made to the application in the supplemental filing.

C.S.H.B. 2963 contains a provision not included in the original requiring the director to provide written notice to the applicant that includes the director's decision regarding whether to extend the review period, the reason for the decision, and the number of days remaining in the review period.

C.S.H.B. 2963 omits a provision included in the original establishing that the director during the review time period will request that the hearings examiner assigned to the case from the office of general counsel review the public notice to ensure that no material change, requiring additional notice, has occurred with this supplemental filing to the application.

C.S.H.B. 2963 differs from the original by requiring the director, not later than the 90th day after the date the commission receives a complete application, to provide written notice to the applicant that the permit revision request has been approved or denied, whereas the original requires the director, within 60 days of receipt of a complete application for a non-significant permit revision, to issue a written response to the applicant either authorizing the requested permit revision or providing a list of deficiency comments with precise citations to applicable regulation sections.

C.S.H.B. 2963 omits a provision included in the original requiring the director, within 30 days of receiving an applicant's response to deficiency comments, to issue a written response authorizing the requested permit revision or setting out additional deficiencies consistent with the application review process.

C.S.H.B. 2963 contains a provision not included in the original establishing, if the director determines that the application is deficient, that the review period to approve or deny the application is tolled until the date the commission receives the requested information from the applicant, requiring the director to send a written notice to the applicant, and setting out the requirements of that notice.

C.S.H.B. 2963 contains a provision not included in the original removing the requirement for the Railroad Commission of Texas to approve or disapprove the revision of a surface coal mining permit not later than the 90th day after the date the permit holder submits the application for revision to the commission.

C.S.H.B. 2963, in a saving provision, differs from the original by making the change in law made by the substitute applicable only to a permit to conduct mining operations the application for which is filed with the Railroad Commission of Texas on or after the effective date of the substitute, whereas the original's saving provision is applicable to applications submitted on or after June 1, 2011, and requires the director of the railroad commission to take all reasonable steps to ensure that applications pending on the effective date of the bill are processed in accordance with timeframes set out in the bill.

C.S.H.B. 2963 contains a provision not included in the original setting an effective date.