

BILL ANALYSIS

C.S.H.B. 3037
By: Chisum
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A contested case hearing is a legal proceeding similar to a civil trial in state district court. Hearings are conducted by the State Office of Administrative Hearings (SOAH), an independent agency tasked with conducting hearings for state agencies, including the Texas Commission on Environmental Quality (TCEQ). When a contested case is referred to the SOAH by TCEQ at the end of a lengthy and inclusive public participation process, an administrative law judge presides over the hearing and considers evidence in the form of sworn witness testimony and documents presented as exhibits. Interested parties note that legislation is needed to facilitate the permitting process to prevent a waste of state resources by modifying the contested case process for environmental permitting. C.S.H.B. 3037 aims to address matters relating to contested case hearings for environmental permits.

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. 3037 amends the Health and Safety Code, in provisions requiring the Texas Commission on Environmental Quality (TCEQ) to consider requests that it reconsider the executive director's decision regarding an application for an environmental permit or hold a public hearing, to require that the hearing under consideration be held in accordance with the applicable provisions of the bill relating to discovery in cases using prefiled written testimony and relating to delegated cases regarding a permit application, in addition to specified Water Code provisions. The bill places a burden of proof, in a public hearing or contested case hearing granted in response to an affected person's request for reconsideration of an environmental permit decision regarding the issuance of a permit, a permit renewal, or a related permit condition, on the affected person to show that the permit should not be issued or renewed or that a related permit condition should be imposed, modified, or omitted. The bill, for the purposes of this permitting provision, provides for the meaning of "affected person" by reference to the Water Code.

C.S.H.B. 3037 amends the Water Code to authorize a state agency that receives notice from TCEQ that an application for an environmental permit or license affecting the agency has been filed to submit comments to TCEQ in response to the notice but prohibits the agency from contesting the issuance of a permit or license by TCEQ. The bill requires, rather than authorizes, the executive director of TCEQ to participate as a party in contested case permit hearings before TCEQ or the State Office of Administrative Hearings (SOAH) to provide information to complete the administrative record, rather than participating for the sole purpose of providing information to complete the administrative record, and to support the executive director's position developed in the underlying proceeding. The bill removes a provision requiring TCEQ to specify the factors the executive director must consider in determining whether to participate as a party in a contested case permit hearing and, in a provision prohibiting the executive

director or the executive director's representative from rehabilitating testimony of a witness unless the witness is a TCEQ employee, removes the requirement that such an employee is testifying for the sole purpose of providing information to complete the administrative record.

C.S.H.B. 3037 requires all discovery in a contested case hearing delegated by TCEQ to the SOAH that uses prefiled written testimony to be completed before the deadline for the submission of that testimony and provides that in a contested case hearing delegated by TCEQ to the SOAH regarding a permit application, the rules, guidance, and policies in effect at the time the technical review portion of the application process closes are the applicable rules, guidance, and policies for the contested case hearing. The bill places a burden of proof, in a contested case hearing regarding the issuance of a permit or specific conditions in a permit, on the affected person who requested the hearing to show that a permit should not be issued or renewed or that a related permit condition should be imposed, modified, or omitted.

C.S.H.B. 3037 repeals Section 5.228(e), Water Code, prohibiting certain parties from assisting a permit applicant in meeting a burden of proof.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3037 omits a provision included in the original placing a burden of proof, in provisions of the Texas Clean Air Act relating to federal operating permits, in a public hearing regarding the issuance of a permit or a specific condition in a federal operating permit, permit amendment, or permit renewal, on the person who requested the hearing to show that a federal operating permit should not be issued or renewed or that a related permit condition should be imposed, modified, or omitted.

C.S.H.B. 3037 differs from the original by providing that in a contested case hearing delegated by the Texas Commission on Environmental Quality to the State Office of Administrative Hearings regarding a permit application, the rules, guidance, and policies in effect at the time the technical review portion of the application process closes are the applicable rules, guidance, and policies for the contested case hearing, whereas the original provides that in such a contested case hearing, the rules, guidance, and policies in effect at the time the technical review portion of the proceeding closes remain in effect for that proceeding.

C.S.H.B. 3037 omits a provision included in the original providing that scientific and technical information available at the time the technical review portion of the proceeding closes is the only scientific and technical information that may be considered in the proceeding.

C.S.H.B. 3037 differs from the original in nonsubstantive ways.