

By: Chisum

H.B. No. 3037

Substitute the following for H.B. No. 3037:

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C.S.H.B. No. 3037

A BILL TO BE ENTITLED

AN ACT

relating to contested case hearings for environmental permits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 382.056(n), Health and Safety Code, is amended to read as follows:

(n) In this subsection, "affected person" has the meaning assigned by Section 5.115, Water Code. Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the applicable procedures provided by Sections 5.315, 5.316, 5.556, and 5.557, Water Code. In a public hearing or contested case hearing granted in response to an affected person's request under Section 5.556, Water Code, regarding the issuance of a permit under Section 382.0518, a permit renewal under Section 382.055, or a related permit condition, the burden of proof is 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.

SECTION 2. Section 5.115(b), Water Code, is amended to read as follows:

(b) At the time an application for a permit or license under this code is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the

1 permit or license. A state agency that receives notice under this  
2 subsection may submit comments to the commission in response to the  
3 notice but may not contest the issuance of a permit or license by  
4 the commission.

5 SECTION 3. Sections 5.228(c) and (d), Water Code, are  
6 amended to read as follows:

7 (c) The executive director shall ~~[may]~~ participate as a  
8 party in contested case permit hearings before the commission or  
9 the State Office of Administrative Hearings to:

10 (1) provide information ~~[for the sole purpose of~~  
11 ~~providing information]~~ to complete the administrative record; and

12 (2) support the executive director's position  
13 developed in the underlying proceeding. ~~[The commission by rule~~  
14 ~~shall specify the factors the executive director must consider in~~  
15 ~~determining, case by case, whether to participate as a party in a~~  
16 ~~contested case permit hearing. In developing the rules under this~~  
17 ~~subsection the commission shall consider, among other factors:~~

18 ~~[(1) the technical, legal, and financial capacity of~~  
19 ~~the parties to the proceeding,~~

20 ~~[(2) whether the parties to the proceeding have~~  
21 ~~participated in a previous contested case hearing,~~

22 ~~[(3) the complexity of the issues presented, and~~

23 ~~[(4) the available resources of commission staff.]~~

24 (d) In a contested case hearing relating to a permit  
25 application, the executive director or the executive director's  
26 designated representative may not rehabilitate the testimony of a  
27 witness unless the witness is a commission employee ~~[testifying for~~

1 ~~the sole purpose of providing information to complete the~~  
2 ~~administrative record].~~

3 SECTION 4. Subchapter H, Chapter 5, Water Code, is amended  
4 by adding Sections 5.315 and 5.316 to read as follows:

5 Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN  
6 TESTIMONY. In a contested case hearing delegated by the commission  
7 to the State Office of Administrative Hearings that uses prefiled  
8 written testimony, all discovery must be completed before the  
9 deadline for the submission of that testimony.

10 Sec. 5.316. DELEGATED CASES REGARDING PERMIT APPLICATION.  
11 In a contested case hearing delegated by the commission to the State  
12 Office of Administrative Hearings regarding a permit application,  
13 the rules, guidance, and policies in effect at the time the  
14 technical review portion of the application process closes are the  
15 applicable rules, guidance, and policies for the contested case  
16 hearing.

17 SECTION 5. Section 5.556, Water Code, is amended by adding  
18 Subsection (g) to read as follows:

19 (g) In a contested case hearing regarding the issuance of a  
20 permit or specific conditions in a permit, the burden of proof is on  
21 the affected person who requested the hearing to show that the  
22 permit should not be issued or renewed or that a related permit  
23 condition should be imposed, modified, or omitted.

24 SECTION 6. Section 5.228(e), Water Code, is repealed.

25 SECTION 7. (a) Section 5.115(b), Water Code, as amended by  
26 this Act, applies only to an application for the issuance,  
27 amendment, extension, or renewal of a permit or license that is

1 received by the Texas Commission on Environmental Quality on or  
2 after the effective date of this Act. An application that is  
3 received before that date is governed by the law in effect at the  
4 time the application is received, and the former law is continued in  
5 effect for that purpose.

6 (b) The changes in law made by this Act apply to a proceeding  
7 before the State Office of Administrative Hearings that is pending  
8 or filed on or after September 1, 2011.

9 SECTION 8. This Act takes effect September 1, 2011.