

By: Chisum

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 382.0561, Health and Safety Code, is amended by adding Subsection (j) to read as follows:

(j) In a public hearing regarding the issuance of a federal operating permit or a specific condition in a federal operating permit, permit amendment, or permit renewal, the burden of proof is on the person who requested the hearing to show that the permit

1 should not be issued or renewed or that a related permit condition
2 should be imposed, modified, or omitted.

3 SECTION 3. Section 5.115(b), Water Code, is amended to read
4 as follows:

5 (b) At the time an application for a permit or license under
6 this code is filed with the executive director and is
7 administratively complete, the commission shall give notice of the
8 application to any person who may be affected by the granting of the
9 permit or license. A state agency that receives notice under this
10 subsection may submit comments to the commission in response to the
11 notice but may not contest the issuance of a permit or license by
12 the commission.

13 SECTION 4. Sections 5.228(c) and (d), Water Code, are
14 amended to read as follows:

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

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

20 (2) support the executive director's position
21 developed in the underlying proceeding. ~~[The commission by rule~~
22 ~~shall specify the factors the executive director must consider in~~
23 ~~determining, case by case, whether to participate as a party in a~~
24 ~~contested case permit hearing. In developing the rules under this~~
25 ~~subsection the commission shall consider, among other factors:~~

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

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

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

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

5 (d) In a contested case hearing relating to a permit
6 application, the executive director or the executive director's
7 designated representative may not rehabilitate the testimony of a
8 witness unless the witness is a commission employee ~~[testifying for~~
9 ~~the sole purpose of providing information to complete the~~
10 ~~administrative record]~~.

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

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

18 Sec. 5.316. DELEGATED CASES REGARDING PERMIT APPLICATION.
19 (a) In a contested case hearing delegated by the commission to the
20 State Office of Administrative Hearings regarding a permit
21 application, the rules, guidance, and policies in effect at the
22 time the technical review portion of the proceeding closes remain
23 in effect for that proceeding.

24 (b) Scientific and technical information available at the
25 time the technical review portion of the proceeding closes is the
26 only scientific and technical information that may be considered in
27 the proceeding.

1 SECTION 6. Section 5.556, Water Code, is amended by adding
2 Subsection (g) to read as follows:

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

8 SECTION 7. Section 5.228(e), Water Code, is repealed.

9 SECTION 8. (a) The changes in law made by this Act apply
10 only to an application for the issuance, amendment, extension, or
11 renewal of a permit that is received by the Texas Commission on
12 Environmental Quality on or after the effective date of this Act.
13 An application that is received before that date is governed by the
14 law in effect at the time the application is received, and the
15 former law is continued in effect for that purpose.

16 (b) The changes in law made by this Act apply to a proceeding
17 before the Texas Commission on Environmental Quality that is
18 pending or filed on or after September 1, 2011.

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