

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 4, 2011**

**TO:** Honorable Wayne Smith, Chair, House Committee on Environmental Regulation

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB3037** by Chisum (Relating to contested case hearings for environmental permits.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would make procedural changes concerning contested case hearings for applications to the Texas Commission on Environmental Quality (TCEQ) for environmental permits which are handled by the State Office of Administrative Hearings (SOAH). The bill would shift the burden of proof from the applicant to the protestant. In addition, the bill would provide that a state agency that would be affected by a permit would be allowed to provide comments to the TCEQ, but it could not contest the issuance of the permit or license. The Executive Director (ED) of the TCEQ would be required to participate as a party in contested cases to support the ED's position, and the ED would no longer be barred from assisting an applicant.

The bill would require that discovery be completed before the deadline for submission of prefiled testimony, if a SOAH administrative law judge requires prefiled evidence. In a contested case hearing before SOAH, the rules, guidance, and policies in effect at the time the technical review portion of the proceeding closes would remain in effect for that proceeding and only scientific and technical information available at the time the technical review portion of the proceeding closes may be considered.

Upon passage of the bill, the TCEQ ED's staff would be required to participate as a party in all contested case hearings. Because the ED is currently a party in most contested hearing cases, this estimate assumes that existing TCEQ staff and resources would be adequate to address any increase in contested case hearing-related workload at the TCEQ. In addition, with the burden of proof shifted from the applicant to the protestant, the actual number of contested case hearings may decrease as applicants are dissuaded from contesting a permit.

Passage of the bill is not expected to have a significant impact on SOAH workload.

**Local Government Impact**

Passage of the bill could increase hearing and/or compliance costs for local governments that challenge the issuance of a permit or challenge the disapproval of an application or permit. However, such costs are not expected to be significant as compared to costs under current law.

**Source Agencies:** 360 State Office of Administrative Hearings, 582 Commission on Environmental Quality

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