

BILL ANALYSIS

Senate Research Center

C.S.S.B. 957
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the current environmental permitting process at the Texas Commission on Environmental Quality (TCEQ), permit applicants are subject to an aspect of the process known as a "contested case hearing" in order to obtain a final permit from TCEQ. A contested case hearing, which is conducted by an administrative law judge at the State Office of Administrative Hearings (SOAH), occurs after the permit application has gone through two rounds of public participation (notice and comment) and an extensive technical review by TCEQ. After the executive director of TCEQ issues the draft permit, but before TCEQ commissioners can vote on the draft permit, most permits are subject to a contested case hearing, which can be invoked by an "affected person" who disagrees with the executive director's decision to issue the draft permit.

There are several problematic issues with the current process. SOAH is under no timeline to conduct a contested case hearing, and the process often delays the issuance of a permit. This process has become detrimental to the state's ability to competitively attract business due to the uncertainty and expense created by the threat of a lengthy contested case hearing.

C.S.S.B. 957 seeks to create a more efficient and predictable environmental permitting process that maintains the state's objective to protect its natural resources while facilitating economic development.

C.S.S.B. 957 amends current law relating to the procedure for action by the Texas Commission on Environmental Quality on applications for certain environmental permits.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 2001.306, Water Code) and SECTION 8 (Sections 5.5541 and 5.5551, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2001, Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. CONTESTED CASES: CERTAIN ENVIRONMENTAL PERMITS

Sec. 2001.301. PURPOSE. Provides that it is the public policy of this state and the purpose of this subchapter to continue leading the country in maintaining protection of public health and the environment while providing stability and certainty for the state's economy.

Sec. 2001.302. DEFINITIONS. Defines, in this subchapter, "commission," "office," and "permit."

Sec. 2001.303. APPLICABILITY. (a) Provides that this subchapter applies to a permit issued by the Texas Commission on Environmental Quality (TCEQ) for:

- (1) a national pollutant discharge elimination system permit under Chapter 26 (Water Quality Control), Water Code;

(2) a Class I or Class III injection well permit under Chapter 27 (Injection Wells), Water Code;

(3) an in situ uranium mining production area authorization under Chapter 27, Water Code;

(4) a permit under Chapter 28, Water Code (Water Wells and Drilled or Mined Shafts);

(5) a solid waste facility permit under Chapter 361 (Solid Waste Disposal Act), Health and Safety Code;

(6) a hazardous waste management facility permit under Chapter 361, Health and Safety Code;

(7) a preconstruction permit under Chapter 382 (Clean Air Act), Health and Safety Code;

(8) a standard permit for a concrete batch plant under Chapter 382, Health and Safety Code; and

(9) a license under Chapter 401 (Radioactive Materials and Other Sources of Radiation), Health and Safety Code.

Sec. 2001.304. BURDEN OF PROOF. Provides that a person who requests a contested case hearing to which this subchapter applies has the burden of proof to demonstrate that the person has a right to a contested case hearing as an affected person as described by Section 5.115 (Persons Affected in Commission Hearings; Notice of Application), Water Code, and TCEQ erred in its decision on a permit application based on the issues and arguments raised by the person requesting the hearing during the public comment period.

Sec. 2001.305. SCOPE OF REVIEW. (a) Provides that the scope of review of a contested case hearing under this subchapter is limited to the administrative record provided to the State Office of Administrative Hearings (SOAH) by the chief clerk of TCEQ.

(b) Prohibits SOAH from considering any issue outside of those described by Section 5.556 (Request for Reconsideration or Contested Case Hearing), Water Code, unless the matter was directly referred to SOAH for a contested case hearing under Section 5.557 (Direct Referral to Contested Case Hearing), Water Code.

Sec. 2001.306. PARTIES. Authorizes a person to join as a party to a contested case hearing only if the person requested a contested case hearing in compliance with any applicable deadlines established by TCEQ rule.

Sec. 2001.307. HEARINGS. (a) Provides that in the event of a conflict between the provisions of this section and another provision of this chapter, this section prevails.

(b) Requires SOAH, not later than the 120th day after the date SOAH conducts a preliminary hearing on the matter, to conclude the hearing and submit a proposal for decision to TCEQ that includes findings of fact and conclusions of law. Prohibits the deadline prescribed by this subsection from being extended unless all parties agree to an extension of time. Prohibits an extension of time granted under this subsection from exceeding 60 days.

SECTION 2. Amends Section 2003.024(d), Government Code, to provide that this section does not apply to hearings conducted by the environmental quality division, rather than the natural resource division, or the utility division or under the administrative license revocation program.

SECTION 3. Amends the heading to Section 2003.047, Government Code, to read as follows:

Sec. 2003.047. ENVIRONMENTAL QUALITY DIVISION.

SECTION 4. Amends Section 2003.047(a), Government Code, to require SOAH to establish an environmental quality division to perform the contested case hearings of certain permit decisions for TCEQ, rather than to require SOAH to establish a natural resource conservation division to perform the contested case hearings for the Texas Natural Resource Conservation Commission (TNRCC).

SECTION 5. Amends Section 2003.048, Government Code, as follows:

Sec. 2003.048. New heading: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. Changes references from TNRCC to TCEQ. Changes references from the natural resource conservation division to the environmental quality division.

SECTION 6. Amends Section 5.115, Water Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Provides that an association is not entitled to standing in a contested case hearing unless the association expressly identifies each member of the association who would otherwise have standing to request a hearing in the member's own right and submits with the hearing request documentation demonstrating that the interests of the association are germane to the matter that is the subject of the contested case and at least part of the association's purpose is to contest permit applications.

(a-2) Requires TCEQ to deny a hearing request submitted by an association that does not satisfy the requirements of Subsection (a-1). Prohibits the information required by Subsection (a-1) from being submitted after the hearing request.

SECTION 7. Amends Section 5.551(a), Water Code, as follows:

(a) Provides that this subchapter establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing under Subchapters C-H and J, Chapter 2001, Government Code, regarding TCEQ actions relating to a permit issued under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code. Provides that this subchapter is procedural and does not expand or restrict the types of TCEQ actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code.

SECTION 8. Amends Subchapter M, Chapter 5, Water Code, by adding Sections 5.5541 and 5.5551, as follows:

Sec. 5.5541. OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING PUBLIC COMMENT PERIOD. (a) Requires a person to raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position on the executive director's preliminary decision before the close of the public comment period.

(b) Requires that supporting materials submitted during the public comment period be included in full in the administrative record for the application and prohibits those materials from being incorporated by reference unless the materials are already part of the administrative record in the same proceeding or consist of state or federal statutes or rules or generally available reference materials.

(c) Requires TCEQ by rule to establish procedures to make supporting materials not already included in the administrative record available to the executive director.

Sec. 5.5551. UNCONTESTED APPLICATIONS. (a) Provides that if a contested case hearing has not been requested in the time and manner required by applicable law, that application is considered uncontested and the executive director is authorized to issue a final decision on the permit application.

(b) Authorizes a person to file with TCEQ a motion to overturn as described by TCEQ rule to challenge an executive director's final decision under this section.

(c) Provides that a final permit decision issued under this section is not subject to a contested case hearing.

SECTION 9. Amends Section 5.556, Water Code, by adding Subsection (g), as follows:

(g) Provides that granting a request for a contested case hearing on a draft permit issued by the executive director creates a rebuttable presumption that the draft permit meets all state and federal legal and technical requirements and is protective of human health and safety.

SECTION 10. Amends Subchapter M, Chapter 5, Water Code, by adding Section 5.5571, as follows:

Sec. 5.5571. FINAL COMMISSION DECISION. (a) Requires TCEQ, not later than the 45th day after the date TCEQ receives a proposal for decision from the State Office of Administrative Hearings, to consider the proposal.

(b) Requires TCEQ, in considering the proposal for decision, to limit each of the parties in the proceedings to one exceptions brief and one reply brief that is authorized to include lonely arguments in reply to another party's exceptions.

(c) Requires that the exceptions brief be submitted not later than the 20th day after the date TCEQ receives the proposal for decision. Requires that a reply brief be submitted not later than the 30th day after the date TCEQ receives the proposal for decision.

SECTION 11. Provides that the changes in law made by this Act apply only to an application for a permit that is filed with TCEQ on or after the effective date this Act. Provides that an application for a permit filed before the effective date of this Act is governed by the law in effect on the date of filing, and that law is continued in effect for that purpose.

SECTION 12. Effective date: September 1, 2013.