

BILL ANALYSIS

S.B. 709
By: Fraser
Environmental Regulation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under the current environmental permitting process at the Texas Commission on Environmental Quality (TCEQ), certain air, water quality, and waste permit applicants are subject to a contested case hearing conducted by an administrative law judge at the State Office of Administrative Hearings (SOAH) before the applicant can obtain a final permit from TCEQ. Interested parties assert that the current process has become detrimental to the state's ability to competitively attract business due to the uncertainty and expense created by the complexity of the process and the possibility of a lengthy contested case hearing. S.B. 709 seeks to address these concerns in a manner that preserves public participation in TCEQ permitting decisions and the contested case hearing process.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

S.B. 709 amends the Government Code to require each issue referred by the Texas Commission on Environmental Quality (TCEQ) to the State Office of Administrative Hearings (SOAH) regarding certain permit applications filed with TCEQ to have been raised by an affected person in a comment submitted by that affected person in response to a permit application in a timely manner. The bill requires the list of such disputed issues submitted by TCEQ to SOAH relating to those permit applications to be detailed and complete and to contain either only factual questions or mixed questions of fact and law. The bill requires the administrative law judge to complete a proceeding regarding a referred matter and provide a proposal for decision to TCEQ not later than the earlier of the 180th day after the date of the preliminary hearing, or the date specified by TCEQ. The bill authorizes the deadline for completing such a proceeding and providing the proposal for decision to be extended by agreement of the parties with the approval of the administrative law judge or by the administrative law judge if the judge determines that failure to extend the deadline would unduly deprive a party of due process or another constitutional right. The bill establishes that with regard to such a determination by the administrative law judge, a political subdivision has the same constitutional rights as an individual.

S.B. 709 establishes that, in a contested case hearing before an administrative law judge regarding those permit applications, the filing with SOAH of the application, the draft permit prepared by the executive director of TCEQ, the TCEQ executive director's preliminary decision,

and other sufficient supporting documentation in the administrative record of the permit application is a prima facie demonstration that the draft permit meets all state and federal legal and technical requirements and that a permit issued consistent with the draft permit would protect human health and safety, the environment, and physical property. The bill authorizes a party to rebut such a prima facie demonstration by presenting evidence that relates to a matter referred for a hearing or an issue included in the list of disputed issues and that demonstrates that the draft permit violates a specific state or federal legal or technical requirement or that the draft permit, if issued, would not protect human health and safety, the environment, or physical property. The bill authorizes the applicant and the executive director of TCEQ to present additional evidence to support the draft permit if a party rebuts a prima facie demonstration.

S.B. 709 amends the Water Code to authorize TCEQ to consider certain information in determining whether a person or an association is an affected person entitled to standing in a contested case hearing for certain air, waste, or water quality applications. The bill authorizes TCEQ, in making such a determination, to consider the merits of the underlying application; the likely impact of regulated activity on the health, safety, and use of the property of the hearing requestor; the administrative record; the analysis and opinions of the executive director of TCEQ; and any other expert reports, affidavits, opinions, or data submitted to TCEQ by the executive director, the applicant, or a hearing requestor on or before any applicable deadline. The bill prohibits TCEQ, in making that determination, from finding that a group or association is an affected person unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would be an affected person in the person's own right and from finding that a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit application.

S.B. 709 includes among actions the executive director of TCEQ is required to take as a participant in contested case permit hearings before TCEQ or SOAH the presentation of evidence supporting a draft permit in relation to which a party rebuts a prima facie demonstration.

S.B. 709 requires TCEQ, not later than January 1, 2016, to adopt rules to implement the bill's provisions and requires TCEQ, for an application filed after the bill's effective date but before the adoption of the rules, to provide sufficient notice to the applicant and other participants in the permit proceeding that the changes in law made by the bill apply to the proceeding.

EFFECTIVE DATE

September 1, 2015.