

BILL ANALYSIS

Senate Research Center

S.B. 709
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Natural Resources and Economic Development
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Today's contested case process puts Texas at a competitive disadvantage economically. Texas is competing against other Gulf Coast states for major economic investments. Texas is at a serious disadvantage because of the length of time it can take to get a permit for any major environmental project if there is a contested case hearing. Companies in competing states can obtain necessary environmental permits in six months to break ground. The same process can take up to two years in Texas. Other states point to the slow Texas environmental permitting process when courting industry prospects.

S.B. 709 does not abolish, repeal, or otherwise eliminate the contested case process. S.B. 709 preserves the current public participation opportunities available in the environmental permitting process at the Texas Commission on Environmental Quality (TCEQ). S.B. 709 codifies recent Texas court decisions that affirm TCEQ's discretion to determine who is an affected party in a contested case. S.B. 709 establishes that the starting place for a contested case hearing is a presumption that a draft permit issued by TCEQ meets all legal and technical requirements and is protective of public health and the environment. TCEQ is legally obligated to thoroughly review permit applications and only issue a draft permit that meets this standard. Texas must ensure an efficient, fair, and competitive process that attracts economic investment and jobs to our communities.

S.B. 709 brings the Texas permitting process closer in line with competing states and makes progress in leveling the playing field for Texas to attract major investments and jobs here. S.B. 709 delivers certainty to investors by establishing a six-month timeframe for the contested case hearing process. Some use the contested case process merely to delay or obstruct economic investment in Texas.

S.B. 709 requires an organization requesting a contested case to identify its affected party representative at the time the contested case hearing is requested, not months into the process. S.B. 709 requires that only a person or group that has openly participated in the TCEQ permitting process may trigger a contested case hearing on a permit.

As proposed, S.B. 709 amends current law relating to environmental permitting procedures for applications filed with the Texas Commission on Environmental Quality.

[**Note:** Although the statutory reference in SECTION 1 of this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the amendments actually apply to the Texas Commission on Environmental Quality (TCEQ) as the successor agency to TNRCC. The references in SECTION 2 are to TCEQ.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2003.047, Government Code, by adding Subsections (d-1) and (d-2) and amending Subsections (e) and (e-1), as follows:

(d-1) Provides that the applicant's filing with the administrative law judge of the draft permit, the preliminary decision of the executive director of the Texas Natural Resource Conservation Commission (executive director) (TNRCC), and any other supporting documentation in the administrative record is a prima facie demonstration that:

(1) the draft permit meets all state and federal statutory, regulatory and technical requirements; and

(2) a permit issued in the same form of the draft permit would be protective of the public's health and physical property and the environment.

(d-2) Requires each protesting party, after the applicant has made a prima facie demonstration pursuant to Subsection (d-1), to be given an opportunity to present evidence to demonstrate that the draft permit does not meet the requirements of Subsection (d-1) based on the number and scope of issues that have been referred by TNRCC. Authorizes the applicant and the executive director to present evidence to support the draft permit after the submission of evidence by the protesting parties.

(e) Requires TNRCC, in referring a matter for hearing pursuant to Water Code Section 5.556 (Request for Reconsideration or Contested Case Hearing), to provide to the administrative law judge a discrete list of disputed factual issues and to specify the date by which the administrative law judge must complete, rather than is expected to complete, the proceeding and provide a proposal for decision to TNRCC, which may not exceed 180 days after the preliminary hearing.

(e-1) Provides that, in matters referred to a hearing pursuant to Water Code 5.556 or 5.557 (Direct Referral to Contested Case Hearing), the administrative law judge:

(1) may extend the proceeding only if the administrative law judge determines that failure to grant an extension would deprive a party of due process or another constitutional right;

(2) subject to Subsection (e-1)(1), shall establish a docket control order designed to complete the proceeding and provide a proposal for decision no later than 180 days after the preliminary hearing or by the date specified by TNRCC, whichever is earlier.

SECTION 2. Amends Section 5.556, Water Code, by adding Subsection (c-1), as follows:

(c-1) Provides that, in determining under Subsection (c) whether a person seeking a contested case hearing is an affected person, Texas Commission on Environmental Quality (TCEQ):

(1) may weigh and resolve matters relating to the merits of the underlying application, including whether the application meets the requirements for issuance and the likely impact of the regulated activity on the health, safety, and use of the property of the hearing requester;

(2) may evaluate the administrative record, including the permit application and any supporting documentation, the analysis and opinions of the executive director of TCEQ (director), and any other expert reports, affidavits, opinions, or data submitted to TCEQ by the executive director, the applicant or a hearing requester within the applicable deadlines to submit hearing requests and briefing to TCEQ;

(3) may not find 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 who would be an affected person in the person's own right; and

(4) may not find that a hearing requester is an affected person unless the hearing requester timely submitted comments, and may only refer an issue pursuant to Subsection (d) if requested by the affected person who raised the issue in a timely submitted comment.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2015.