

BILL ANALYSIS

S.B. 2203
By: Birdwell
Environmental Regulation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that the Texas Commission on Environmental Quality (TCEQ) contracts with the State Office of Administrative Hearings to conduct administrative hearings, that an administrative law judge presides over these hearings and makes decisions that are forwarded to the TCEQ as a proposal for decision, and that TCEQ commissioners will either adopt, amend, or deny the proposal. The bill sponsor has also informed the committee that with voluminous, complex, and highly technical environmental regulations, a proper decision requires current knowledge of law, rule, policy, and guidance, as well as technical information, and that misinterpreting scientific data or TCEQ legal requirements can lead to lost opportunities and resources. The bill sponsor has further informed the committee that administrative law judges have sometimes allowed irrelevant discovery, requiring protestants or applicants to challenge discovery orders by requesting certified questions to the commissioners, and that administrative law judges sometimes do not certify questions, leaving parties with no recourse, which can lead to inconsistent decisions. S.B. 2203 seeks to achieve consistency with TCEQ requirements to ensure environmental and public health benefits are realized, provide certainty and predictability to protestants and applicants, and help ensure TCEQ-related statutes, rules, and guidance are applied consistently by providing for the prompt certification by an administrative law judge, on a motion made by a party, to the TCEQ of an issue relating to the scope of permissible discovery.

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 rulemaking authority is expressly granted to the State Office of Administrative Hearings and to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

S.B. 2203 amends the Government Code to require the rules jointly adopted by the State Office of Administrative Hearings (SOAH) and the Texas Commission on Environmental Quality (TCEQ) that provide for certification to the TCEQ of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the TCEQ by law to do the following:

- provide that on a motion made by a party, the administrative law judge must promptly certify to the TCEQ any issue relating to the scope of permissible discovery; and
- provide that certification of an issue expires by operation of law if the certified issue is not set for the TCEQ's consideration within 15 days after the date the administrative law judge files with the chief clerk a request for the TCEQ to answer the certified issue.

The bill authorizes the administrative law judge, following certification to the TCEQ of an issue relating to the scope of permissible discovery, to abate, until the first business day following the earlier of the TCEQ's consideration of the certified issue or the expiration by operation of law of the issue's certification, the deadline for the administrative law judge to complete a proceeding and provide a proposal for decision to the TCEQ for a matter referred under specified Water Code provisions relating to a request for the reconsideration by the TCEQ of a decision of the TCEQ executive director or for the holding by the TCEQ of a contested case hearing or relating to the direct referral by the TCEQ, on request, to SOAH for a contested case hearing of an application for which the TCEQ executive director has issued a preliminary decision.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.