

BILL ANALYSIS

Senate Research Center
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S.B. 2203
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Commission on Environmental Quality (TCEQ) refers to the State Office of Administrative Hearings (SOAH) to conduct contested case hearings where an administrative law judge (ALJ) issues a Proposal for Decision (PFD) that the TCEQ commissioners ultimately review. These hearings often involve complex legal and technical questions, and require a thorough understanding of legal requirements, agency rules, policy guidance, and scientific data. Given the consequential nature of the outcomes of these hearings, it is important that disputes over certain aspects of the process can be resolved in a timely and effective manner.

One aspect of these contested case hearings where issues can arise involves the scope of discovery. If an ALJ permits a discovery request that goes beyond matters relevant to the case, the protestor or applicant of the case may challenge the discovery order by requesting certified questions to the commissioner. However, if an ALJ refuses to certify these questions, regardless of the validity of the questions, the affected parties would be left without a clear path to challenge discovery disputes, which can lead to inconsistent decisions and uncertainty in the regulatory process.

S.B. 2203 directs TCEQ and SOAH to jointly adopt rules that will require any scope of discovery issue raised by either party of the case to be certified by the ALJ to the TCEQ commissioners. The bill ensures that both protestants and applicants have a defined mechanism to resolve scope of discovery disputes.

As proposed, S.B. 2203 amends current law relating to rules providing for certification of issues to the Texas Commission on Environmental Quality in contested cases referred to the State Office of Administrative Hearings by the commission.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the State Office of Administrative Hearings is modified in SECTION 1 (Section 2003.047, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 1 (Section 2003.047, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2003.047(i), Government Code, as follows:

- (i) Requires that the rules jointly adopted by the State Office of Administrative Hearings and the Texas Commission on Environmental Quality (TCEQ) meet certain criteria, including by providing that any issue raised by a party relating to the scope of discovery under Subsection (g) (relating to limiting the scope of permissible discovery to certain matters) is required to be promptly certified by the administrative law judge to TCEQ. Makes nonsubstantive changes.

SECTION 2. Effective date: upon passage or September 1, 2025.