

BILL ANALYSIS

Senate Research Center
89R25531 JFR-F

C.S.S.B. 2203
By: Birdwell
Natural Resources
4/23/2025
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Commission on Environmental Quality (TCEQ) refers contested case hearings to the State Office of Administrative Hearings (SOAH) for eligible air, water, and waste permits. An administrative law judge (ALJ) from SOAH presides over these hearings, and upon the hearing's conclusion, issues a proposal for decision (PFD) that is reviewed by the TCEQ commissioners. 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 a contested case's outcome, it is important that disputes that arise during the hearing can be resolved in a timely and effective manner before the PFD is sent to the commissioners to be approved, amended, or denied.

One aspect of a contested case hearing where issues arise is during the discovery process, particularly concerning the scope of discovery. If an ALJ permits a discovery request that goes beyond matters relevant to the case, the protestant 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 method to challenge discovery disputes. This can lead to inconsistent decisions and uncertainty in the regulatory process.

C.S.S.B. 2203 directs TCEQ and SOAH to jointly adopt rules that require an ALJ to certify scope of discovery issues to TCEQ upon request of either party. In this instance, an ALJ may choose to abate the deadline of the contested case until one business day after TCEQ finalizes the determination on the certified issue. The bill ensures that both protestants and applicants in the case have a defined mechanism to resolve scope of discovery disputes, and ensures that PFDs are not based on factors that fall outside the contested matter.

C.S.S.B. 2203 amends current law relating to the certification of discovery 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, Government Code, by amending Subsection (i) and adding Subsection (i-4), as follows:

- (i) Requires the Texas Commission on Environmental Quality (TCEQ) and State Office of Administrative Hearings (SOAH) to publish jointly adopted rules. Requires that the rules jointly adopted by SOAH and 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.

(i-4) Authorizes the administrative law judge, following the certification to TCEQ of an issue raised by a party relating to the scope of discovery under Subsection (g) (relating to providing that the scope of permissible discovery is limited to certain matters), to abate the deadline specified by Subsection (e-2) (relating to requiring the administrative law judge to complete certain proceedings and provide a proposal for decision to TCEQ by a certain time) until the first business day after the date TCEQ's determination on the certified issue becomes final.

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