

BILL ANALYSIS

Senate Research Center
89R30949 KRM-D

S.B. 3074
By: Birdwell
Natural Resources
5/20/2025
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Administrative Procedures Act (APA) under Government Code Chapter 2001 stipulates the restrictions related to ex parte communications. Ex parte communications are those in which one or more of the parties to a matter are not included. The APA provides that, unless required for the disposition of an ex parte matter authorized by law, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.

In the context of matters before the Texas Commission on Environmental Quality (TCEQ), this means a communication with a commissioner or staff member who has a matter before them, such as a permit application, enforcement action, or another decision pertaining to a regulated entity.

As written, the law does not allow for the governor, the lieutenant governor, or a legislator to communicate with TCEQ when a permit or other matter are before the agency. The result of the law has prohibited even simple questions from the executive and legislative leaders of our state from being answered when they pertain to matters before the commission.

As such, S.B. 3074 would allow the governor, the lieutenant governor, and members of the legislature to communicate with a TCEQ official or employee concerning any matter before TCEQ and requires TCEQ to receive the communication. The bill specifies that a commission official or employee who receives such communication is not required to be recused from the matter discussed in the communication. In making this adjustment, the bill provides for safeguards to ensure the communication happens in an appropriate manner, parties to the matter are involved, and conflicts of interest are prevented.

As proposed, S.B. 3074 amends current law relating to communications between the Texas Commission on Environmental Quality and the governor, the lieutenant governor, or a member of the legislature.

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 Subchapter E, Chapter 5, Water Code, by adding Section 5.180, as follows:

Sec. 5.180. COMMUNICATIONS WITH CERTAIN GOVERNMENT OFFICIALS. (a)
Defines "communicate."

(b) Authorizes the governor, the lieutenant governor, or a member of the legislature, notwithstanding any other law, to communicate with a Texas Commission on Environmental Quality (TCEQ) official or employee concerning

any matter before TCEQ. Provides that a TCEQ official or employee who receives a communication under this section is not required to be recused from the matter discussed in the communication.

(c) Requires the TCEQ official or employee to receive a communication described by Subsection (b).

(d) Requires TCEQ, if TCEQ receives written communication described by Subsection (b), to include in the record of the matter before TCEQ a copy of the written communication.

(e) Requires TCEQ, if TCEQ receives a communication described by Subsection (b), to provide for any party subject to the matter discussed in the communication an opportunity to respond to the communication.

(f) Prohibits an individual from communicating with a TCEQ official or employee under Subsection (b) concerning a matter that affects a business entity in which the individual has a substantial interest or in which a person related to the individual within the first degree of consanguinity has a substantial interest, as determined by Section 572.005 (Determination of Substantial Interest), Government Code.

SECTION 2. Effective date: September 1, 2025.