

SUBJECT: Defining affected persons in TNRCC contested case hearings

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Counts, Yost, Corte, King, R. Lewis, Puente, Walker
0 nays
2 absent — Combs, Stiles

SENATE VOTE: On final passage, April 27 — voice vote (Moncrief, Truan recorded nay)

WITNESSES: No public hearing

BACKGROUND: Under Water Code sec. 5.115, when an application for a permit or license is filed with the Texas Natural Resource Conservation Commission (TNRCC), the commission is to give notice of the application to any person who may be affected by granting the permit or license.

DIGEST: SB 1546 would define the persons affected by an administrative hearing held by TNRCC involving contested cases. An "affected person," "person affected" or "person who may be affected" would mean a person who has a justiciable interest related to a legal right, duty, privilege or power affected by the administrative hearing. An interest common to members of the general public would not qualify as a personal justiciable interest.

TNRCC would not be required to hold a hearing if the commission determined that the basis of a person's request for a hearing as an affected person was not reasonable or was not supported by competent evidence.

TNRCC would be required to adopt rules specifying factors to be considered in determining whether a person is an affected person in any contested case arising under the air, waste, or water programs within TNRCC's jurisdiction, and whether an affected association was entitled to standing in contested case hearings.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

Current law does not clearly spell out who is an "affected person" in a contested case before the TNRCC. Since affected persons are given standing in TNRCC contested case hearings, it is important to have some sort of official criteria for who is an affected person. Both TNRCC and members of the public would benefit from a more specific standard for determining who has standing by being "affected" by a contested case.

Requiring a person to have a personal justiciable interest related to the hearing in order to participate in a contested hearing would be a broad, equitable criterion for determining who should participate. SB 1546 would require TNRCC to adopt rules to spell out exactly who would have standing in a contested case hearing arising from air, waste, or water programs within the TNRCC's jurisdiction.

"Affected person" has been so broadly interpreted that just about anyone can now participate in a contested case hearing. This encourages those who may have a political agenda with nothing to do with the specifics of a particular case to participate in the hearing, which can be time consuming, expensive and nonproductive for both the agency and the other parties in the contested case.

Often, state law requires parties in a contested case to provide notice to affected parties every time there is a development in the case. This can be expensive, especially if a number of so-called affected parties are present to delay a permit by any means necessary.

**OPPONENTS
SAY:**

SB 1546 would too broadly restrict who could seek a contested case hearing before TNRCC. The bill would also direct the agency to take a more restrictive view as to who would have standing in a hearing. This could greatly restrict citizen participation in the hearing process and cut off valuable information about the impact of a permit or license that the commission may need to know.

Applicants that have a sound project and a proper application have nothing to fear from a hearing. Applications are actually rarely contested since the public does not waste time and money fighting projects unless they present potential health and safety concerns, which hearings are designed to bring out.

SB 1546 would also give TNRCC the ability to deny a hearing when the request was "not reasonable," but does not define reasonable. An applicant would always argue that an opponent was unreasonable. Giving TNRCC an ill-defined test to apply would grant too broad discretion to the agency.