

BILL ANALYSIS

Senate Research Center

H.B. 801
By: Uher (Armbrister)
Natural Resources
5/5/1999
Engrossed

DIGEST

Currently, if an application to issue, amend, or renew a permit for which public notice and an opportunity for public hearing is required or allowed under Chapter 26 or 27, Water Code, or required or allowed under Chapter 361 or 382, Health and Safety Code, and the application is contested, Chapter 2001, Government Code, applies. This bill would establish that Subchapters D - H of Chapter 2001 do not apply to the aforementioned permit applications and establishes an alternative procedure for such proceedings.

PURPOSE

As proposed, H.B. 801 establishes procedures for public participation in certain environmental permitting procedures of the Texas Natural Resource Conservation Commission.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTIONS 2, 3, 5, and 6 (Section 5.551(b) and (c), Section 5.555(a), and Section 5.556(a), Section 26.0286(b)(2), Water Code, Section 382.056(a) and (g), Health and Safety Code, and Section 2003.047(h), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.115(a), Water Code, to delete a provision regarding a requirement to hold a hearing.

SECTION 2. Amends Chapter 5, Water Code, by adding Subchapter M, as follows:

SUBCHAPTER M. ENVIRONMENTAL PERMITTING PROCEDURES

Sec. 5.551. PERMITTING PROCEDURES; APPLICABILITY. Provides that this subchapter establishes procedures for providing public notice, an opportunity for public comment and hearing (public actions) regarding the Texas Natural Resource Conservation Commission (commission) actions relating to a permit issued under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code, and that this subchapter does not restrict or expand the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided under Chapter 26 or 27 or Chapter 361, Health and Safety Code. Requires the commission, by rule, to provide for additional public actions to the extent necessary to satisfy a requirement for United States Environmental Protection Agency (EPA) authorization of a state permit program. Defines "permit."

Sec. 5.552. NOTICE OF INTENT TO OBTAIN PERMIT. Requires the executive director of the commission (executive director) to determine when an application is administratively complete. Requires an applicant to publish notice of intent to obtain a permit (notice) in a newspaper and requires the chief clerk of the commission (clerk) to mail the notice of intent to obtain a permit to certain governmental offices, not later than 30 days after the executive director determines an application to be administratively complete. Requires the commission, by rule, to establish the form and content of the notice. Requires the notice to include certain information regarding the proposed activity. Requires an applicant to comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapter 361, Health and Safety Code, and rules adopted under those chapters. Requires the applicant to make a copy of the application available for public review and copy. Authorizes the applicant to hold a public meeting to inform the public about the

application and obtain public input.

Sec. 5.553. PRELIMINARY DECISION; NOTICE AND PUBLIC COMMENT. Requires the executive director to conduct a technical review of and issue a preliminary decision on the application. Requires the applicant to publish notice of the preliminary decision in a newspaper. Requires the commission, by rule, to establish the form and content of the notice, the manner of publication, and the duration of the public comment period. Requires the notice to include certain information regarding the preliminary decision. Requires the applicant to make a copy of the preliminary decision available for public review and copy. Makes conforming changes.

Sec. 5.554. PUBLIC MEETING. Authorizes the executive director to hold public meetings and requires the executive director to hold such meetings at the request of the member of the legislature who represents the general area in which the facility is located or proposed to be located or if the executive director determines that there is substantial public interest in the proposed activity.

Sec. 5.555. RESPONSE TO PUBLIC COMMENTS. Requires the executive director to file with the clerk a response to each relevant and material public comment on the preliminary decision filed during the public comment period. Requires the clerk to transmit to certain persons involved with the proposed activity, the executive director's decision, response to public comments and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

Sec 5.556. REQUEST FOR RECONSIDERATION OR CONTESTED CASE HEARING. Authorizes a person to file a request, during the period provided by commission rule, for the commission to reconsider the executive director's decision or hold a contested case hearing. Requires the commission to act on a request during a period provided by commission rule. Prohibits the commission from granting a request for a contested case hearing unless it is determined that the request was filed by a person affected as defined by Section 5.115. Prohibits the commission from referring an issue to the State Office of Administrative Hearings (SOAH) unless the commission makes certain determinations. Requires the commission to limit the number and scope of the issues to be referred to SOAH and specify the maximum expected duration of the hearing, if the commission grants a request for a contested case hearing. Provides that this section does not preclude the commission from holding a hearing if it determines that the public interest warrants doing so.

SECTION 3. Amends Chapter 26B, Water Code, by adding Section 26.0286, as follows:

Sec. 26.086. PROCEDURES APPLICABLE TO PERMITS FOR CERTAIN CONCENTRATED ANIMAL FEEDING OPERATIONS. Defines "sole-source surface drinking water supply." Requires the commission to process an application for authorization to construct and operate a concentrated animal feeding operation (feeding operation) as a specific permit under Section 26.028 subject to the procedures provided by Chapter 5M, if the feeding operation is located or proposed to be located in the watershed of a sole-source surface drinking water supply and sufficiently close, as determined by commission rule, to potentially affect the public drinking water supply.

SECTION 4. Amends Section 361.088, Health and Safety Code, by amending Subsection (c) and adding Subsections (e) and (f), to require the commission to provide an opportunity for public hearing before a permit is issued, except as provided by Subsection (e). Authorizes the commission, without providing an opportunity for a contest case hearing, to act on an application to renew certain permits regarding the storage and processing of hazardous waste under specified conditions. Requires the commission to provide an opportunity to request a contested case hearing if the commission determines an issue of an applicant's ability to comply with a material term of a permit is raised, notwithstanding Subsection (e).

SECTION 5. Amends Section 382.056, Health and Safety Code, by amending Subsections (a), (b), (d), and (e) and adding Subsections (f) - (p), to require an applicant for a permit under Section 382.0518, rather than Section 382.054, or a permit renewal under Section 382.055 (state permit) to publish notice of intent to obtain the permit or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. Requires, rather than authorizes, the commission to require an applicant for a federal operating permit under Section 382.054 to publish notice consistent with

the requirements of Subsection (b), rather than of this section. Requires the commission, by rule, to prescribe the form and content of the notice. Authorizes the commission to require the publication of an additional notice. Requires the commission, by rule, to prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source and will not have a significant effect on air quality. Requires the alternative procedures to be cost-effective. Requires the notice to include certain information. Requires the executive director to conduct a technical review of and issue a preliminary decision on the application. Requires the applicant to publish notice of the preliminary decision in a newspaper and requires the commission to seek public comment on the preliminary decision, if a person requests during the period determined by commission rule that the commission hold a public hearing and the request is not withdrawn prior to the issuance of the preliminary decision. Requires the commission to consider a request for public hearing under the procedures provided by Subsections (i) - (n). Prohibits the commission from seeking further public comment or hold public hearing under the procedures provided by Subsections (i) - (n) in response to a request for a public hearing on a modification that would result in an increase in allowable emissions. Requires the commission to consider a request for public comment made during the period provided by commission rule under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i) - (n). Requires a notice published under Subsection (a) to include certain information. Requires the clerk to transmit to certain persons, including any person who timely filed a request for a public hearing in response to the notice published under Subsection (a), the executive director's decision, response to public comments and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case. Requires the commission to consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the procedures provided by Section 5.556, Water Code, except as provided by Section 382.0561. Authorizes the commission to hold a hearing on a permit amendment if the commission, rather than board, determines that an applicant has a negative compliance history. Requires the commission, by rule, to provide for public actions to the extent necessary to satisfy a requirement to obtain or maintain delegation or approval of a federal program. Deletes text regarding a statement that a person may be affected by certain air contaminants. Deletes a provision requiring the commission to hold a public hearing. Makes conforming changes.

SECTION 6. Amends Section 2003.047, Government Code, by amending Subsections (e) - (j) and adding Subsections (k) - (o), to require the commission to provide a list of disputed issues to an administrative law judge (judge) in referring a matter for hearing, rather than when the office receives jurisdiction of a proceeding. Requires the commission to specify the date by which the administrative law judge is expected to complete the proceeding and provide a proposal for decision. Authorizes the judge to extend the proceeding if the judge determines that failure to grant an extension would deprive a party of due process. Requires the judge to establish a docket control order designed to complete the proceeding by the date specified by the commission. Provides that the scope of the hearing is limited to the issues referred by the commission, except as otherwise provided by this subsection. Authorizes a judge to consider an issue that was not referred by the commission under certain circumstances. Sets forth limitations to the scope of permissible discovery. Requires the commission, by rule, to provide for subpoenas and commissions for depositions, and require that discovery be conducted in accordance with the Texas Rules of Civil Procedure, except that the commission by rule is required to determine the level of discovery under Rule 190, Texas Rules of Civil Procedure. Deletes a provision regarding areas that must be addressed. Makes conforming changes.

SECTION 7. (a) Effective date: September 1, 1999.

(b) Makes application of this Act prospective.

(c) Provides that the changes in law made by SECTION 5 do not expand or restrict the types of actions of the commission for which public actions are provided under Chapter 382, Health and Safety Code.

SECTION 8. Emergency clause.