

BILL ANALYSIS

Senate Research Center

H.B. 2877
By: Bonnen et al. (Armbrister)
Natural Resources
5/14/2003
Engrossed

DIGEST AND PURPOSE

H.B. 2877 provides that the Texas Commission on Environmental Quality, in considering a permit, only has to respond to written comments during the notice and comment process; clarifies the times that a request for reconsideration of the executive director's decision and a request for a contested case hearing are made; clarifies that the only person who can request a contested case is a person who has participated in the full process to that point and is an affected person; tightens the requirements for issues that are referred to a contested case in response to practices that seem to currently allow broad issues to be referred; clarifies the process in the air permitting statutes that currently allows an early request for hearing to stand as a request for contested case hearing; and limits who can be named parties to a hearing at the state office of hearing examiners.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Section 5.556, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.554, Water Code, as follows:

Sec. 5.554. PUBLIC MEETING. (a) Created from existing text.

(b) Requires the Texas Commission on Environmental Quality (TCEQ) to extend the public comment period automatically until the close of the public meetings. Prohibits TCEQ from extending the period during which requests for initiation of the public participation process or requests for reconsideration may be filed.

SECTION 2. Amends Section 5.555(a), Water Code, to require the executive director, in accordance with procedures provided by TCEQ rule, to file with the chief clerk of TCEQ a response to each relevant and material public comment on the preliminary decision filed in writing during the public comment period.

SECTION 3. Amends Section 5.556, Water Code, by amending Subsections (a), (c), and (d) and adding Subsection (g), as follows:

(a) Requires a request for reconsideration of the executive director's decision to be filed with TCEQ after publication of the preliminary decision during the period provided by TCEQ rule. Requires a request for a contested case hearing to be filed with TCEQ after transmittal of the executive director's response to public comments during the period provided by TCEQ rule.

(c) Prohibits TCEQ from granting a request for a contested case hearing unless TCEQ determines that the request was filed by an affected person as defined by Section 5.115 who submitted written comments during the public comment period.

(d) Prohibits TCEQ from referring an issue to the state office of administrative hearings for a hearing, unless TCEQ determines certain facts.

(g) Provides that notwithstanding other law, public notice of a contested case hearing TCEQ grants under this section is not required. Requires TCEQ by rule to provide for notice of a hearing TCEQ grants under this section to be given to the applicant, the office of public interest counsel, the executive director, and the persons whose hearing requests have been granted.

SECTION 4. Amends Section 382.056, Health and Safety Code, by amending Subsections (b), (g), (h), (i), (l), (m), and (n) and adding Subsections (s) and (t), as follows:

(b) Requires the notice to include certain information.

(g) Requires the applicant to publish notice of the preliminary decision in a newspaper, and requires TCEQ to seek public comment on the preliminary decision in accordance with the procedures provided by Subsections (i)-(n), if, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person files a request during the period provided by TCEQ rule that TCEQ initiate the public participation process, rather than holding a public hearing, and the request is not withdrawn before the date the preliminary decision is issued. Prohibits, however, TCEQ from seeking further public comment or holding a public hearing in response to a request for initiation of the public participation process, rather than hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Deletes text regarding a hearing under the procedures provided by Subsections (i)-(n).

(h) Makes conforming changes.

(i) Requires TCEQ by rule to establish the form and content of the notice of preliminary decision under Subsection (g), the manner of publication, and the duration of the public comment period. Requires the notice to include certain information.

(l) Makes a conforming change.

(m) Makes conforming changes.

(n) Requires TCEQ, except as provided by Section 382.0561, to consider a request that TCEQ reconsider the executive director's decision or hold a contested case hearing, rather than a public hearing, in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(s) Requires TCEQ, if a request to initiate the public participation process is not filed during the period prescribed by TCEQ rule for a permit or permit amendment under Section 382.0518 or for a permit renewal review under Section 382.055, to conduct a public hearing held in response to a later public notice required solely by federal program requirements in accordance with Section 382.0561 and not under Chapter 2001, Government Code.

(t) Requires TCEQ to extend the public comment period automatically until the close of the public meetings held under Subsection (k). Prohibits TCEQ from extending the period during which requests for initiation of the public participation process or requests for reconsideration may be filed.

SECTION 5. Amends Section 2003.047, Government Code, by adding Subsections (p) and (q), as follows:

(p) Authorizes the administrative law judge, in designating parties to a hearing on a permit application, to name as parties only the executive director, the office of public interest counsel, the permit applicant, and other persons whose hearing requests have

been granted by TCEQ and whose issues have been referred by TCEQ for a contested case hearing. Authorizes the executive director to participate in a contested case hearing only to the extent described in Section 5.228, Water Code.

(q) Authorizes an administrative law judge to make a summary disposition of the issues referred by TCEQ as provided by TCEQ rules.

SECTION 6. (a) Effective date: September 1, 2003.

(b) Makes application of this Act prospective.