

BILL ANALYSIS

Senate Research Center
78R5139 MI-F

S.B. 1263
By: Armbrister
Natural Resources
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As Filed

DIGEST AND PURPOSE

As proposed, S.B. 1263 provides that the Texas Commission on Environmental Quality only has to respond to written comments during the notice and comment process; clarifies the times that a request for a contested case hearing is made; clarifies that the only person who can request a contested case hearing 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 law that currently allows an early request for hearing to stand as a request for a contested case hearing; and clarifies who can be named parties to a hearing at the State Office of Administrative Hearings.

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 Section 5.555(a), Water Code, to require the executive director, in accordance with procedures provided by the Texas Commission on Environmental Quality (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 2. Amends Sections 5.556(a), (c), and (d), Water Code, 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 issues.

SECTION 3. Amends Sections 382.056(b), (g), (h), (i), (l), (m), and (n), Health and Safety Code, 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 the commission 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 hold 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 hold a public hearing in response to a request for initiation of the public participation process 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.

(h) Requires TCEQ to consider the request under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n), if, in response to the notice published under Subsection (a) for a permit under Section 382.054, a person requests during the public comment period provided by TCEQ rule that TCEQ initiate the public participation process, rather than a hearing.

(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) Requires the executive director, in accordance with procedures adopted by TCEQ by 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.

(m) Requires the chief clerk of TCEQ to transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that TCEQ reconsider the executive director's decision or hold a contested case hearing to certain persons.

(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, rather than public hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

SECTION 4. Amends Section 2003.047, Government Code, by adding Subsection (p) to authorize 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.

SECTION 5. (a) Effective date: September 1, 2003.

(b) Makes application of this Act prospective.