

BILL ANALYSIS

Senate Research Center
84R18732 SLB-F

C.S.S.B. 709
By: Fraser
Natural Resources & Economic Development
4/1/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the current environmental permitting process at the Texas Commission on Environmental Quality (TCEQ), permit applicants are subject to an aspect of the process known as a “contested case hearing” in order to obtain a final permit from TCEQ. A contested case hearing is conducted by an administrative law judge at the State Office of Administrative Hearings (SOAH). One significant issue with the current process is that SOAH is under no timeline to complete a contested case hearing, and the process can significantly delay the issuance of a permit. This process has become detrimental to the state’s ability to competitively attract business due to the uncertainty and expense created by the threat of a lengthy contested case hearing.

C.S.S.B. 709 preserves the current public participation opportunities available in the environmental permitting process.

C.S.S.B. 709 establishes that the starting place for a contested case hearing is a presumption that a draft permit issued by TCEQ meets all legal and technical requirements and is protective of public health and the environment. TCEQ is legally obligated to thoroughly review permit applications and only issue a draft permit that meets this standard.

C.S.S.B. 709 amends current law relating to procedures for certain environmental permit applications.

[**Note:** Although the statutory reference in SECTION 1 of this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality (TCEQ), as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Section 5.115, Water Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2003.047, Government Code, by adding Subsections (e-1), (e-2), (i-1), (i-2), and (i-3) and amending Subsection (f), as follows:

(e-1) Provides that this subsection applies only to a matter referred under Section 5.556 (Request for Reconsideration or Contested Case Hearing), Water Code. Requires that each issue referred by TNRCC have been raised by an affected person in a comment submitted by that affected person in response to a permit application in a timely manner. Requires that the list of issues submitted under Subsection (e) (relating to TNRCC providing a list of disputed issues to the law judge) be detailed and complete, and contain either only factual questions or mixed questions of fact and law.

(e-2) Provides that, for a matter referred under Section 5.556 or 5.557 (Direct Referral to Contested Case Hearing), Water Code, the administrative law judge is required to complete the proceeding and provide a proposal for decision to TNRCC not later than the earlier of:

(1) the 180th day after the date of the preliminary hearing; or

(2) the date specified by TNRCC or the administrative law judge, if applicable, under Subsection (e).

(i-1) Provides that, in a contested case regarding a permit application referred under Section 5.556 or 5.557, Water Code, the filing with the office of the application, the draft permit prepared by the executive director of TNRCC, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:

(1) the draft permit meets all state and federal legal and technical requirements; and

(2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.

(i-2) Authorizes a party to rebut a demonstration under Subsection (i-1) by presenting evidence that:

(1) relates to a matter referred under Section 5.557, Water Code, or an issue included in a list submitted under Subsection (e) in connection with a matter referred under Section 5.556, Water Code; and

(2) demonstrates that:

(A) the draft permit violates a specific state or federal legal or technical requirement; or

(2) the draft permit, if issued, would not protect human health and safety, the environment, or physical property.

(i-3) Provides that, if in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.

SECTION 2. Amends Section 5.115, Water Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Makes no change to this subsection;

(a-1) Creates this subdivision from existing text. Provides that, for a matter referred under Section 5.556, TCEQ:

(1) is authorized to consider:

(A) the merits of the underlying application, including whether the application meets the requirements for permit issuance;

(B) the likely impact of regulated activity on the health, safety, and use of the property of the hearing requestor;

(C) the administrative record, including the permit application and any supporting documentation;

(D) the analysis and opinions of the executive director; and

(E) any other expert reports, affidavits, opinions, or data submitted on or before any applicable deadline to TCEQ by the executive director, the applicant, or a hearing requestor; and

(2) is prohibited from finding that:

(A) a group or association is an affected person unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would be an affected person in the person's own right; or

(B) a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit application.

SECTION 3. Amends Section 5.228(c), Water Code, as follows:

(c) Requires the executive director to participate as a party in contested case permit hearings before TCEQ or the State Office of Administrative Hearings to present evidence supporting a draft permit under Section 2003.047(i-3), Government Code. Makes nonsubstantive changes.

SECTION 4. (a) Provides that the changes in law made by this Act apply only to a permit application that is filed with TCEQ on or after the effective date of this Act. Provides that a permit application filed before the effective date of this Act is governed by the law in effect when the permit application was filed, and the former law is continued in effect for that purpose.

(b) Requires TCEQ, not later than January 1, 2016, to adopt rules to implement the changes in law made by this Act. Provides that, for an application filed after the effective date of this Act but before the adoption of rules to implement the changes in law made by this Act, TCEQ is required to provide sufficient notice to the applicant and other participants in the permit proceeding that the changes in law made by this Act apply to the proceeding.

SECTION 5. Effective date: September 1, 2015.