

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1071
By: Armbrister
Natural Resources
3/14/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

The 76th Texas Legislature enacted legislation to create a new procedure for contested case proceedings on certain environmental permitting actions by the Texas Natural Resource Conservation Commission (TNRCC). The bill required early notice of applications, more detailed public comments, and a narrowing of contested issues prior to a referral of a matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The bill was intended to increase public participation and streamline contested case matters before TNRCC. Both industry and environmental groups believed that early review of an application and an examination of disputed issues would result in more efficient, less costly permit proceedings. C.S.S.B. 1071 provides applicants the option of going directly to a contested case hearing under certain conditions. C.S.S.B. 1071 gives an applicant for a TNRCC permit the ability to weigh the costs and permit processing timeframes against the costs and risks associated with having to prove all aspects of the application in a contested case and choose which option to pursue.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Section 5.557, Water Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 5M, Water Code, as added by Section 2, Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, by adding Section 5.557, as follows:

Sec. 5.557. DIRECT REFERRAL TO CONTESTED CASE HEARING. (a) Requires the Texas Natural Resource Conservation Commission (commission) or the general counsel, after the executive director issues a preliminary decision on an application under Section 5.553 and upon request of the applicant, to refer the application directly to the State Office of Administrative Hearings for a contested case hearing on whether the application complies with all applicable statutory and regulatory requirements.

(b) Provides that Sections 5.555 - 5.556 of this code and Sections 2003.047 (Natural Resource Conservation Division)(e) and (f), Government Code, do not apply to an application referred for a hearing under Subsection (a)

(c) Requires the commission by rule, notwithstanding Subsection (b), to provide for public comment and the executive director's response to public comment to be entered into the administrative record of decision on an application for a permit under a delegated or authorized federal program if the comment and response are required for permit decisions under that program.

SECTION 2. Amends Section 382.056(n), Health and Safety Code, to make a conforming change.

SECTION 3. Requires the commission to adopt rules to implement Section 5.557, Water Code, as

added by this Act, and Section 382.056(n), Health and Safety Code, as amended by this Act, as soon as is necessary for the rules to take effect on or before January 1, 2002.

SECTION 4. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Differs from original As Filed S.B. 1071, by requiring either the commission or the general counsel to refer the application. Omits “immediately.” Provides that Sections 5.555 - 5.556 (rather than 5.554 - 5.556) of this code do not apply to an application referred for a hearing under Subsection (a). Requires the commission by rule, notwithstanding Subsection (b), to provide for public comment and the executive director’s response to public comment to be entered into the administrative record of decision on an application for a permit under a delegated or authorized federal program. Replaces “under the delegated program” with “under that program.”

SECTION 2. No changes in text.

SECTION 3. No changes in text.

SECTION 4. No changes in text.