

BILL ANALYSIS

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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, which is conducted by an administrative law judge at the State Office of Administrative Hearings (SOAH), occurs after the permit application has gone through two rounds of public participation (notice and comment) and an extensive technical review by TCEQ. After the executive director of TCEQ issues the draft permit, but before TCEQ commissioners can vote on the draft permit, most permits are subject to a contested case hearing, which can be invoked by an “affected person” who disagrees with the executive director's decision to issue the draft permit.

There are several problematic issues with the current process. SOAH is under no timeline to conduct a contested case hearing, and the process often delays 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.

S.B. 957 seeks to create a more efficient and predictable environmental permitting process that maintains the state's objective to protect its natural resources while facilitating economic development. S.B. 957 creates definitive timelines for the permitting process at TCEQ and for the administrative appeals process at SOAH.

As proposed, S.B. 957 amends current law relating to the procedure for action by the Texas Commission on Environmental Quality on applications for certain environmental permits and administrative and judicial review of the commission's action.

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

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the chief administrative law judge of the State Office of Administrative Hearings in SECTION 7 (Section 2003.047, Government Code) and SECTION 40 of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is modified in SECTION 14 (Section 5.551, Water Code), SECTION 16 (Section 5.552, Water Code), SECTION 17 (Section 5.553, Water Code), SECTION 20 (Section 5.555, Water Code), and SECTION 22 (Section 27.018, Water Code) of this bill.

Rulemaking authority is expressly granted to TCEQ in SECTION 19 (Sections 5.5541 and 5.5542, Water Code), SECTION 21 (Section 5.5551, Water Code) of this bill.

Rulemaking authority previously granted to the Texas Natural Resource Conservation Commission (TNRCC) is modified in SECTION 32 (Section 382.056, Health and Safety Code) of this bill.

Rulemaking authority previously granted to TNRCC is rescinded in SECTION 39 (Sections 361.089 and 382.056, Health and Safety Code) of this bill.

Rulemaking authority previously granted to TCEQ is rescinded in SECTION 39 (Sections 5.115, 5.556, 5.557, and 28.028, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2001, Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. ADMINISTRATIVE REVIEW OF CERTAIN ENVIRONMENTAL PERMITS

Sec. 2001.301. **PURPOSE.** Provides that it is the public policy of this state and the purpose of this subchapter to continue leading the country in maintaining protection of public health and the environment while providing stability and certainty for the state's economy.

Sec. 2001.302. **DEFINITIONS.** Defines, in this subchapter, "commission," "interested person," "office," and "permit."

Sec. 2001.303. **APPLICABILITY.** (a) Provides that this subchapter applies to a final Texas Commission on Environmental Quality (TCEQ) decision issued under Section 5.5553, Water Code, following a public hearing under Section 5.5541, Water Code, for:

- (1) a national pollutant discharge elimination system permit under Chapter 26 (Water Quality Control), Water Code;
- (2) a Class I injection well permit under Chapter 27 (Injection Wells), Water Code;
- (3) an in situ uranium mining permit under Chapter 27, Water Code;
- (4) a permit under Chapter 28, Water Code (Water Wells and Drilled or Mined Shafts);
- (5) a solid waste facility permit under Chapter 361 (Solid Waste Disposal Act), Health and Safety Code;
- (6) a hazardous waste management facility permit under Chapter 361, Health and Safety Code;
- (7) a preconstruction permit under Chapter 382 (Clean Air Act), Health and Safety Code;
- (8) a standard permit for a concrete batch plant under Chapter 382, Health and Safety Code; and
- (9) a license under Chapter 401 (Radioactive Materials and Other Sources of Radiation), Health and Safety Code.

(b) Provides that this subchapter does not apply to a permit for which a hearing under Section 5.5541(d), Water Code, is not held.

Sec. 2001.304. **REVIEW OF FINAL PERMIT DECISIONS.** (a) Authorizes an interested person who filed a comment on the permit application or participated in a public hearing on the permit application, no later than the 30th day after the date notice of TCEQ's final decision on a permit application under Section 5.5553, Water Code, is published in the Texas Register, to file a petition for administrative review of the permit decision by the State Office of Administrative Hearings (SOAH).

(b) Authorizes person who failed to file a comment or participate in the public hearing on the permit application to petition for administrative review of the permit decision only with regard to any changes made to the draft permit in the permit decision.

(c) Requires that the petition be filed with the chief clerk of TCEQ. Requires the chief clerk, not later than the fifth calendar day after the date TCEQ receives the petition, to forward the petition to SOAH for review. Requires the chief clerk to include with the petition:

(1) if the permit was issued, the final permit and the administrative record for the final permit, including the findings of fact and conclusions of law that support the issuance of the permit, the draft permit and the findings of fact and conclusions of law that support the draft permit, and the executive director of TCEQ's preliminary decision on the permit application;

(2) all comments received during the public comment period other than comments received in a public meeting held under Section 5.554, Water Code;

(3) the tape or transcript of any public hearing held under Section 5.5541, Water Code;

(4) the response to the comments required by Section 5.555, Water Code; and

(5) any other documents contained in the supporting materials for the permit.

(d) Requires that the petition include a statement of the reasons supporting review by SOAH, including a demonstration that any issues raised in the petition were raised during the public comment period or at a public hearing or relate to changes made to the draft permit in the permit decision.

(e) Authorizes SOAH to grant the petition only if the petitioner demonstrates that the basis for the review is a finding of fact or conclusion of law that is clearly erroneous or an exercise of discretion or an important policy consideration that SOAH should, in its discretion, review.

(f) Authorizes TCEQ and the permit applicant, if applicable, to each file a response to the petition not later than the 30th day after the date the petition is filed.

(g) Authorizes the petitioner to file a reply brief not later than the 15th day after the date of the service of a response described by Subsection (f).

(h) Authorizes SOAH to, in its discretion, deny the petition, even if the petition satisfies the requirements of Subsection (e).

(i) Provides that the scope of review on a petition is limited to the administrative record provided to SOAH by the chief clerk of TCEQ. Prohibits new evidence from being raised or considered by SOAH in reviewing the petition.

(j) Requires SOAH, not later than the 60th day after the date SOAH receives the petition, to issue an order granting or denying the petition. Provides that an issue raised in a denied petition is eligible for judicial review of the issue in the Court of Appeals for the Third Court of Appeals District.

Sec. 2001.305. ADMINISTRATIVE REVIEW. (a) Requires SOAH, if SOAH grants a petition for review under Section 2001.304, to give public notice of the review not later than the 10th day before the date set for the review that includes:

- (1) a statement of the time, place, and nature of the review;
- (2) a statement of the legal authority and jurisdiction under which the review is to be held;
- (3) a reference to the specific sections of the statutes and rules involved in the matter under review;
- (4) a short, plain statement of the matters asserted; and
- (5) at the discretion of SOAH, a briefing schedule for the review that may allow the submission of briefs by a petitioner, the permit applicant, TCEQ, and the office of public interest counsel of TCEQ.

(b) Authorizes SOAH, if SOAH determines that the briefing provided with the petition for review is sufficient to make a final decision, to conclude that additional briefing is not necessary.

(c) Authorizes SOAH to allow for the filing of amicus briefs. Requires that notice required under Subsection (a), if applicable, include instructions for any interested person to file an amicus brief.

(d) Authorizes SOAH to, in addition to establishing a briefing schedule, direct the parties to present oral argument on a specified issue.

(e) Requires that the scope of review by SOAH be limited to review of the administrative record, briefs provided by the parties, and any oral arguments presented to SOAH.

(f) Requires SOAH to issue a decision not later than the 60th day after the date it grants the petition.

(g) Provides that SOAH is limited to the following actions with regard to a final decision issued by TCEQ: affirm TCEQ's final decision, or remand the final decision to TCEQ with recommendations to address clearly erroneous findings of fact or conclusions of law identified by SOAH, an exercise of discretion, or an important policy consideration.

(h) Provides that, if SOAH affirms TCEQ's final decision, that final decision is eligible for judicial review in the Court of Appeals for the Third Court of Appeals District.

Sec. 2001.306. ISSUES REMANDED TO THE COMMISSION. (a) Requires TCEQ, not later than the 30th day after the date SOAH remands a decision to TCEQ, to modify the decision accordingly or decline to modify the decision.

(b) Requires that an action taken by TCEQ under Subsection (a) be published in the Texas Register and include an explanation describing TCEQ's reasoning for the action.

(c) Provides that TCEQ's action on a decision remanded to TCEQ by SOAH is eligible for judicial review in the Court of Appeals for the Third Court of Appeals District.

SECTION 2. Amends the heading to Subchapter G, Chapter 2001, Government Code, to read as follows:

SUBCHAPTER G. JUDICIAL REVIEW

SECTION 3. Amends Section 2001.171, Government Code, as follows:

Sec. 2001.171. JUDICIAL REVIEW. (a) Creates this subsection from existing text. Provides that a person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case or in an administrative review under Subchapter J of an environmental permit decision is entitled to judicial review under this chapter.

(b) Provides that, except as provided by Section 2001.227, this subchapter applies to an administrative review under Subchapter J of an environmental permit in the same manner as it applies to a contested case.

SECTION 4. Amends Subchapter I, Chapter 2001, Government Code, by adding Section 2001.227, as follows:

Sec. 2001.227. VENUE AND STANDARD OF REVIEW FOR CERTAIN ENVIRONMENTAL CASES. (a) Provides that the venue for judicial review of an action or decision identified under Subchapter J as eligible for judicial review is in the Court of Appeals for the Third Court of Appeals District.

(b) Provides that the standard of review of an action or decision under Subchapter J is whether the action or decision was arbitrary and capricious or characterized by abuse or a clearly unwarranted exercise of discretion.

(c) Provides that a court, under the arbitrary and capricious standard of review, is prohibited from substituting its judgment for the judgment of TCEQ, but is authorized to affirm the decision in whole or in part or to require to reverse and remand the case for further proceedings if substantial rights of the permit applicant have been prejudiced because the findings, inferences, conclusions, or decisions of TCEQ are in violation of a constitutional or statutory provision; in excess of the agency's statutory authority; made through unlawful approval; affected by other error of law; arbitrary or capricious; or characterized by abuse or clearly unwarranted exercise of discretion.

SECTION 5. Amends Section 2003.024(d), Government Code, to provide that this section does not apply to hearings conducted by the environmental quality division (division), rather than natural resource conservation division, or the utility division or under the administrative license revocation program.

SECTION 6. Amends the heading to Section 2003.047, Government Code, to read as follows:

Sec. 2003.047. ENVIRONMENTAL QUALITY DIVISION.

SECTION 7. Amends Section 2003.047, Government Code, by amending Subsections (a), (b), and (m) and adding Subsection (p), as follows:

(a) Requires SOAH to establish a division, rather than a natural resource conservation division, to perform the contested case hearings and administrative review of certain permit decisions for TCEQ, rather than the Texas Natural Resource Conservation Commission (TNRCC).

(b) Requires the division to conduct hearings relating to contested cases before TCEQ, other than a hearing conducted by one or more commissioners, and to conduct administrative review of TCEQ permit application decisions to which Subchapter J, Chapter 2001, applies.

(m) Requires TCEQ, rather than requires TCEQ except as provided by Section 361.0832 (Proposal for Decision; Certified Issues; Reversal by Commission), Health and Safety Code, to consider the proposal for decision prepared by the administrative law judge, the exceptions of parties, and the briefs and arguments of the parties.

(p) Requires the chief administrative law judge of SOAH to adopt rules that govern the procedure to be used by the division for the administrative review of a TCEQ decision on an environmental permit to which Subchapter J, Chapter 2001, applies.

SECTION 8. Amends Section 2003.048, Government Code, as follows:

Sec. 2003.048. New heading: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. Changes references from TNRCC to TCEQ.

SECTION 9. Amends Section 5.311(a), Water Code, to authorize TCEQ to delegate to an administrative law judge of SOAH the responsibility to hear any matter before TCEQ other than a matter that is the subject of a public hearing under Section 5.5541.

SECTION 10. Amends Section 5.313, Water Code, to provide that any reference in law to a hearing examiner who has a duty related to a case pending before TCEQ, other than a case involving a matter that is the subject of a public hearing under Section 5.5541, means an administrative law judge of SOAH.

SECTION 11. Amends Subchapter H, Chapter 5, Water Code, by adding Section 5.316, as follows:

Sec. 5.316. APPLICABILITY OF CONTESTED CASE PROCEDURE TO CERTAIN HEARINGS. Provides that Subchapters C, D, E, and F, Chapter 2001, Government Code, do not apply to an application for an original permit, permit amendment, or permit renewal to which Subchapter J, Chapter 2001, Government Code, applies.

SECTION 12. Amends Subchapter I, Chapter 5, Water Code, by adding Section 5.358, as follows:

Sec. 5.358. JUDICIAL REVIEW OF PERMITS SUBJECT TO ADMINISTRATIVE REVIEW. Provides that, except as provided by Section 2001.227, Government Code, Subchapter G, Chapter 2001, Government Code, applies to the judicial review of a permit action or decision under Subchapter J, Chapter 2001, Government Code, instead of this subchapter.

SECTION 13. Amends Sections 5.402(a) and (b), Water Code, as follows:

(a) Authorizes an applicant, at any time before the public notice of the opportunity to request a public hearing on a permit application, to request that consolidated applications be processed separately as determined by the executive director.

(b) Authorizes the executive director, at any time after the notice of opportunity to request a public hearing, rather than at any time after the notice of opportunity to request a hearing but before referral of the matter to SOAH, to separate the applications for processing on a showing of good cause by the applicant that the applications should be processed separately.

SECTION 14. Amends Sections 5.551(a) and (b), Water Code, as follows:

(a) Provides that this subchapter establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing, rather than an opportunity for public hearing under Subchapters C-H, Chapter 2001, Government Code, regarding commission actions relating to a permit issued under Chapter 26 (Water Quality Control), 27 (Injection Wells), or 28 (Water Wells and Drilled or Mined Shafts) of this code or Chapter 361 (Solid Waste Disposal Act), 382 (Clean Air Act), or 401

(Radioactive Materials and Other Sources of Radiation), Health and Safety Code. Provides that this subchapter is procedural and does not expand or restrict the types of TCEQ actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided under Chapter 26, 27, or 28 of this code or Chapter 361, 382, or 401, Health and Safety Code.

(b) Makes a conforming change.

SECTION 15. Amends Subchapter M, Chapter 5, Water Code, by adding Section 5.5515, as follows:

Sec. 5.5515. DEFINITIONS. Defines, in this subchapter, "interested person" and "permit."

SECTION 16. Amends Sections 5.552(a) and (d), Water Code, as follows:

(a) Requires the executive director, not later than the 30th day after the date TCEQ receives the application, to determine whether, rather than when, an application is administratively complete.

(d) Requires an applicant, in addition to providing notice under Subsection (b)(1) (relating to requiring the applicant to publish notice of intent to obtain a permit at least once in certain publications), to comply with any applicable public notice requirements under Chapters 26, 27, and 28 of this code, Chapters 361, 382, and 401, Health and Safety Code, and rules adopted under those chapters.

SECTION 17. Amends Section 5.553, Water Code, by amending Subsections (c) and (d) and adding Subsections (f) and (g), as follows:

(c) Requires that the notice established by TCEQ by rule include certain information, including, if applicable, a description of the procedure for requesting a public hearing on the preliminary decision.

(d) Requires an applicant, in addition to providing notice under Subsection (b)(1), to comply with any applicable public notice requirements under Chapters 26, 27, and 28 of this code, Chapters 361, 382, and 401, Health and Safety Code, and rules adopted under those chapters.

(f) Requires the duration of the public comment period to extend to the later of the close of a public hearing on the matter, if applicable, or the 45th day after the date the public comment period begins.

(g) Authorizes the executive director, if the executive director determines that there is substantial public interest in extending the public comment period, to extend the public comment period described by Subsection (f) for a period not to exceed 30 days.

SECTION 18. Amends Section 5.554, Water Code, as follows:

Sec. 5.554. PUBLIC MEETING. (a) Defines, in this section, "public meeting."

(b) Creates this subsection from existing text. Authorizes the executive director or the applicant, during the public comment period, in cooperation with the executive director, to hold one or more public meetings in the county in which the facility is located or proposed to be located or in an adjacent county.

(c) Creates this subsection from existing text and makes no further changes.

SECTION 19. Amends Subchapter M, Chapter 5, Water Code, by adding Sections 5.5541 and 5.5542, as follows:

Sec. 5.5541. PUBLIC HEARING. (a) Defines, in this section, "public hearing."

(b) Authorizes an interested person to request a public hearing after a preliminary decision has been issued on an application for a permit, permit renewal, or permit amendment for:

- (1) a national pollutant discharge elimination system permit under Chapter 26;
- (2) a Class I injection well permit under Chapter 27;
- (3) an in situ uranium mining permit under Chapter 27;
- (4) a permit under Chapter 28;
- (5) a solid waste facility permit under Chapter 361, Health and Safety Code;
- (6) a hazardous waste management facility permit under Chapter 361, Health and Safety Code;
- (7) a preconstruction permit under Chapter 382, Health and Safety Code;
- (8) a standard permit for a concrete batch plant under Chapter 382, Health and Safety Code; or
- (9) a license under Chapter 401, Health and Safety Code.

(c) Requires the executive director to hold a public hearing not later than the 35th day after the date the request is made under Subsection (b).

(d) Provides that the following permits are not eligible for a public hearing:

- (1) a general permit under Chapter 26;
- (2) any of the following permits under Chapter 382, Health and Safety Code, including a standard permit, other than a standard permit for a concrete batch plant or a permit by rule;
- (3) any of the following permits under Chapter 26, 27, or 28 of this code or Chapter 361, 382, or 401, Health and Safety Code, including an administrative permit or a minor permit, minor permit amendment, or minor permit modification, as those terms are defined by TCEQ rule, or a registration; and
- (4) any permit determined by TCEQ rule to be ineligible for a hearing.

(e) Requires that a public hearing be held in the county in which the facility is located or proposed to be located or in an adjacent county.

(f) Authorizes a public hearing for a permit application not listed in Subsection (b) or (d) to be held if the executive director determines that there is a substantial public interest in the proposed activity.

(g) Requires that notice of a public hearing be given not later than the 30th day before the date of the hearing and in the same form and manner as is required for notice of a preliminary decision under Section 5.553(c).

(h) Provides that the executive director is responsible for the scheduling and orderly conduct of a public hearing.

(i) Requires TCEQ to by rule establish the procedures for requesting and conducting a public hearing, including reasonable time limits for oral statements and provisions for asking and answering questions.

(j) Authorizes any person, at a public hearing, to submit oral or written comments and data concerning the preliminary decision.

Sec. 5.5542. OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING PUBLIC COMMENT PERIOD. (a) Requires an interested person to raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position on the executive director's preliminary decision before the close of the public comment period.

(b) Requires that supporting materials submitted during the public comment period be included in full in the administrative record for the application and prohibits such materials from being incorporated by reference unless the materials are already part of the administrative record in the same proceeding or consist of state or federal statutes or rules or generally available reference materials.

(c) Requires TCEQ to by rule establish procedures to make supporting materials not already included in the administrative record available to the executive director.

SECTION 20. Amends Section 5.555, Water Code, as follows:

Sec. 5.555. RESPONSE TO PUBLIC COMMENTS. (a) Requires 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 during the public comment period, including an oral or written comment delivered at a public hearing, but not including an oral or written comment raised solely at a public meeting. Requires the executive director to respond to only those comments that substantially relate to the permit application.

(b) Requires the chief clerk of TCEQ, not later than the 60th day after the date the public comment period ends, to transmit the executive director's decision, the executive director's response to public comments, a draft permit under Section 5.5551, if applicable, and instructions for filing a petition for an administrative review of a final TCEQ decision, rather than instructions for requesting that TCEQ reconsider the executive director's decision or hold a contested case hearing, to the applicant, any person who submitted comments during the public comment period, and any person who requested to be on the mailing list for the permit action.

(c) Authorizes the time limit described by Subsection (b), if, after the close of the public comment period, the executive director determines that additional time is necessary to respond to public comments, to be extended for a period not to exceed 30 days.

SECTION 21. Amends Subchapter M, Chapter 5, Water Code, by adding Sections 5.5551, 5.5552, and 5.5553, as follows:

Sec. 5.5551. DRAFT PERMIT. (a) Requires the executive director, if the executive director approves a permit application, to prepare a draft permit that includes the findings of fact and conclusions of law that support the issuance of the draft permit. Requires the chief clerk of TCEQ to include the draft permit with the information transmitted under Section 5.555(b).

(b) Requires TCEQ to by rule develop a procedure for an interested person to file proposed findings of fact and conclusions of law for consideration by the executive director for the purpose of preparing the draft permit.

Sec. 5.5552. UNCONTESTED APPLICATIONS. Provides that, if a public hearing is not requested and comments are not filed on an application, that application is considered uncontested and the executive director is authorized to issue the final permit. Provides that a final permit issued under this section is not subject to administrative or judicial review.

Sec. 5.5553. FINAL COMMISSION DECISION ON CERTAIN PERMIT APPLICATIONS; PETITION FOR ADMINISTRATIVE REVIEW. (a) Requires TCEQ, not later than the 30th day after the date the chief clerk transmits the executive director's decision as described by Section 5.555(b), to approve, disapprove, or approve with modifications the executive director's decision and publish notice of the decision in the Texas Register.

(b) Requires TCEQ, if TCEQ approves the draft permit, to issue a final permit that includes the findings of fact and conclusions of law that support the issuance of the final permit.

(c) Provides that a final permit issued by TCEQ is effective on the date of approval by TCEQ. Authorizes the permit applicant to rely on the final permit to conduct the authorized activity.

(d) Provides that TCEQ's action under Subsection (a) is subject to administrative review by SOAH under Subchapter J, Chapter 2001, Government Code.

(e) Provides that a petition for administrative review by SOAH is a prerequisite to seeking judicial review of a final TCEQ action on a permit application.

SECTION 22. Amends Sections 27.018(a) and (b), Water Code, as follows:

(a) Requires TCEQ on request to hold a public hearing on a permit application for a Class I injection well. Deletes existing text authorizing TCEQ, if it is considered necessary and in the public interest, to hold a public hearing on the application. Deletes existing text requiring TCEQ to hold a hearing on a permit application for an injection well to dispose of industrial and municipal waste if a hearing is requested by a local government located in the county of the proposed disposal well site or by an affected person. Deletes existing text defining, in this subsection, "local government."

(b) Requires TCEQ by rule to provide for giving notice of a public hearing, rather than notice of the opportunity to request a public hearing, on a permit application.

SECTION 23. Amends Sections 27.0513(a) and (d), Water Code, as follows:

(a) Provides that an application for a new permit issued pursuant to Section 27.011 (Permit From Commission), a major amendment of such a permit, or a renewal of such a permit for mining of uranium is subject to the public notice requirements, rather than the public notice requirements and opportunity for contested case hearing, provided under Section 27.018 (Hearing on Permit Application).

(d) Provides that, notwithstanding Sections 5.551, 27.011, and 27.018, rather than notwithstanding Sections 5.551, 5.556, 27.011, and 27.018, an application for an authorization submitted after September 1, 2007, is an uncontested matter not subject to an administrative review under Subchapter J, Chapter 2001, Government Code, rather than not subject to a contested case hearing or the hearing requirements of Chapter 2001, Government Code, unless the authorization seeks any of the following certain conditions.

SECTION 24. Amends Section 361.082(b), Health and Safety Code, to require TNRCC on request, rather than authorizing TNRCC on its own motion or the request of a person affected, to hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

SECTION 25. Amends Section 361.0831, Health and Safety Code, as follows:

Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Prohibits a hearings examiner conducting a public hearing on a permit application, unless required for the disposition of ex parte matters authorized by law rather than unless required for the disposition of ex parte matters authorized by law, or unless permitted by Section 2001.061, Government Code, from communicating, directly or indirectly, with any employee of TNRCC, any commissioner, or any party to a hearing conducted by TNRCC in connection with any issue of fact or law pertaining to an administrative review, rather than a contested case, in which TNRCC or party is involved.

(b) Prohibits an employee of TNRCC, a commissioner, or a party to a hearing conducted by TNRCC, except for communications allowed under Subsection (a), from attempting to influence the finding of facts or the application of law or rules by a hearings examiner conducting a public hearing except with notice and opportunity for all parties to participate, rather than except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate with notice and opportunity for all parties to participate.

(c) Requires the hearings examiner conducting the public hearing, if a prohibited contact is made, to notify all parties with a summary of that contact and notice of their opportunity to respond and to give all parties an opportunity to respond.

SECTION 26. Amends Sections 361.088(c) and (d), Health and Safety Code, as follows:

(c) Requires TNRCC, except as provided by Subsection (e), before a permit is issued, amended, extended, or renewed, on request to hold a public hearing, rather than to provide an opportunity for hearing to the applicant and persons affected.

(d) Requires TNRCC, rather than requiring TNRCC in addition to providing an opportunity for a hearing held under this section, to hold a public meeting as described by Section 5.554, Water Code, and give notice as provided by Section 361.0791.

SECTION 27. Amends Section 361.089(b), Health and Safety Code, to make conforming changes.

SECTION 28. Amends Section 361.121(c), Health and Safety Code, to make a nonsubstantive change and to delete existing text providing that an owner of land located within one-quarter mile of the proposed land application unit who lives on that land is an affected person for purposes of Section 5.115, Water Code.

SECTION 29. Amends Section 361.321(a), Health and Safety Code, to authorize a person affected by a ruling, order, decision, or other act of TNRCC to appeal the action by filing a petition in a district court of Travis County, except that a final decision by TNRCC on an application for a permit, permit renewal, or permit amendment that is subject to administrative review under Subchapter J, Chapter 2001, Government Code, may be appealed to the court of appeals for the Third Court of Appeals District.

SECTION 30. Amends Section 382.032(a), Health and Safety Code, to authorize a person affected by a ruling, order, decision, or other act of TNRCC or of the executive director, if an appeal to TNRCC is not provided, to appeal the action by filing a petition in a district court of Travis County, except that a final decision by TNRCC on an application for a permit, permit renewal, or permit amendment that is subject to administrative review under Subchapter J, Chapter 2001, Government Code, may be appealed to the court of appeals for the Third Court of Appeals District.

SECTION 31. Amends Section 382.055(g), Health and Safety Code, to change references to a contested case proceeding to a public hearing conducted by TNRCC.

SECTION 32. Amends Sections 382.056(b), (g), (h), and (m), Health and Safety Code, as follows:

(b) Requires that the notice include certain information, including a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that informs the public of the executive director's obligation under Section 5.5541(b), Water Code, to hold a public hearing on the application, rather than a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from TNRCC;

(g) Requires the applicant, if, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 (Preconstruction Permit) or a permit renewal review under Section 382.055, a person requests during the period provided by TNRCC rule that the TNRCC hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, to publish notice of the preliminary decision in a newspaper, and TNRCC is required to seek public comment on the preliminary decision. Requires TNRCC to consider the request for public hearing under the procedures provided by Subsections (i)-(m), rather than Subsection (i)-(n). Prohibits TNRCC from seeking further public comment or hold a public hearing under the procedures provided by Subsections (i)-(m), rather than Subsection (i)-(n) in response to a request for a public 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.

(h) Makes conforming changes.

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

SECTION 33. Amends Section 382.059(d), Health and Safety Code, to make conforming changes.

SECTION 34. Amends Sections 401.114(a) and (c), Health and Safety Code, as follows:

(a) Requires TCEQ, before TCEQ grants or renews a license to process or dispose of low-level radioactive waste from other persons, to give notice and to provide an opportunity for a public hearing in the manner provided by Section 5.5541, Water Code, rather than provided by TCEQ's formal hearing procedure and Chapter 2001, Government Code.

(c) Requires TCEQ to mail, by certified mail in the manner provided by TCEQ rules, written notice to each person who owns property adjacent to the proposed site. Deletes existing text requiring TCEQ or the applicant, if true, to certify that the notice was mailed as required by this subsection, and providing that at the hearing the certificate is conclusive evidence of the mailing.

SECTION 35. Amends Section 401.116(d), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 36. Amends Section 401.227(a), Health and Safety Code, to require TCEQ, in selecting an application for the compact waste disposal facility license, to follow certain procedures, including to review the selected application under Subdivision (3) (relating to

evaluating applications and selecting the application that has the highest comparative merit in accordance with Section 401.232) for technical completeness in accordance with Section 401.237 (Technical Review) and issue a draft license, rather than issuing a draft license in accordance with Sections 401.237 and 401.238 (Notice of Draft License and Opportunity for Hearing).

SECTION 37. Amends Section 401.240(a), Health and Safety Code, to authorize a person affected by an action of TCEQ under this subchapter, notwithstanding any other law, to file a petition for judicial review of the action only after TCEQ takes final action on a license application, rather than a license application under Section 401.239(d) (relating to requiring TCEQ to take final action on the proposal for decision of the administrative law judge by a certain time).

SECTION 38. Amends Sections 401.264(a) and (e), Health and Safety Code, as follows:

(a) Provides that TCEQ on its own motion is authorized, or on written request is required, to provide an opportunity for a public hearing on an application over which TCEQ has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials. Deletes existing text providing that the public hearing be provided in the manner provided by Chapter 2001, Government Code, and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath. Makes a conforming change.

(e) Provides that the determination is subject to administrative review, rather than judicial review, under Subchapter J, Chapter 2001, Government Code, and following administrative review or the denial of a petition for administrative review, is subject to judicial review in the court of appeals for the Third Court of Appeals District, rather than in a district court of Travis County.

SECTION 39. Repealers: Sections 361.068(b) (relating to providing that once a determination that an application is administratively and technically complete has been made and the permit application has become the subject of a contested case under Section 2001.003, Government Code, the commission is authorized to perform certain tasks) and (c) (relating to prohibiting Subsection (b) from excluding certain actions), Health and Safety Code;

Repealer: Section 361.079(b) (relating to requiring hearings to be conducted in accordance with the hearing rules and the applicable provisions of Chapter 2001, Government Code), Health and Safety Code;

Repealer: Section 361.082(g) (relating to requiring the applicant for a permit for a new hazardous waste management facility to furnish a bond or other financial assurance authorized by the commission), Health and Safety Code;

Repealer: Section 361.083 (Evidence of Notice of Hearing), Health and Safety Code;

Repealer: Section 361.0832, (Proposal for Decision; Certified Issues; Reversal by Commission), Health and Safety Code;

Repealer: Section 361.0833 (Costs for Information Provided by a Person Affected Regarding Hazardous Waste Permit), Health and Safety Code;

Repealer: Section 361.085(b) (relating to authorizing the commission to order a party in a contested case permit hearing to provide certain information), Health and Safety Code;

Repealers: Sections 361.088(e) (relating to authorizing the commission to act on an application to renew certain permits) and (f) (relating to requiring TNRCC to request a contested case hearing), Health and Safety Code;

Repealer: Section 361.089(d) (relating to requiring that hearings in this section be conducted in accordance with the hearing rules adopted by the commission and certain applicable provisions), Health and Safety Code;

Repealers: Sections 382.056(n) (relating to requiring TNRCC to consider a request to reconsider the executive director's decision regarding certain permit applications or hold a public hearing in a certain manner) and (o) (relating to authorizing TNRCC to hold a hearing on a permit amendment, modification, or renewal if TNRCC determines that the application involves a facility for which the applicant's compliance history is classified as unsatisfactory according to certain standards and rules), Health and Safety Code;

Repealer: Section 382.0566(c) (relating to providing that the advanced clean energy project permit process is subject to certain requirements relating to a contested case hearing), Health and Safety Code;

Repealer: Section 382.058(c) (relating to authorizing only those persons actually residing in a permanent residence within 440 yards of a proposed concrete plant to request a hearing as a person who may be affected), Health and Safety Code;

Repealer: Section 382.059(f) (relating to providing that a person affected by a TNRCC decision to issue or deny a permit amendment of certain electric generating facilities may move for rehearing and is entitled to certain judicial review), Health and Safety Code;

Repealer: Section 401.003(15) (defining "person affected"), Health and Safety Code;

Repealer: Section 401.238 (Notice of Draft License and Opportunity for Hearing), Health and Safety Code;

Repealer: Section 401.239 (Contested Case; Final Action on Application), Health and Safety Code;

Repealers: Sections 401.245(g) (relating to providing that, for the purposes of a contested case involving the adoption of party state compact waste disposal fees, only a party state generator of low-level radioactive waste may be considered a person affected) and (h) (relating to requiring the administrative law judge assigned to the contested case involving the adoption of party state compact waste disposal fees to issue a proposal for decision on fees proposed by TCEQ by a date certain), Health and Safety Code;

Repealer: Section 401.2455(b) (relating to prohibiting an extension of the period during which interim rates for party state compact waste disposal fees apply from being granted and requiring all disposal at the compact waste disposal facility to cease until the rates are adopted), Health and Safety Code;

Repealer: Section 401.264(b) (relating to authorizing a person affected by licensed activity to process materials that produce by-product materials or dispose of by-product material to become a party to a proceeding to determine that the person possesses a justiciable interest in the result of the proceeding), Health and Safety Code;

Repealer: Section 5.115 (Persons Affected in Commission Hearings; Notice of Application), Water Code;

Repealers: Sections 5.228(c) (relating to requiring the executive director to participate as a party in a contested case permit hearing before TCEQ or SOAH for certain purposes) and (d) (relating to prohibiting the executive director or his or her designated representative, in a contested case hearing relating to a permit application, from rehabilitating the testimony of a witness unless the witness is a TCEQ employee), Water Code;

Repealer: Section 5.315 (Discovery in Cases Using Prefiled Written Testimony), Water Code;

Repealer: Section 5.402(c) (relating to authorizing an applicant, after an application has been referred to SOAH, to have the applications processed separately only on a showing of compliance with TCEQ procedural rules regarding the withdrawal of applications), Water Code;

Repealer: Section 5.552(f) (relating to authorizing the applicant, in cooperation with the executive director, to hold a public meeting in the county in which the facility is located in order to inform the public about the application and obtain public input), Water Code;

Repealer: Section 5.556 (Request for Reconsideration or Contested Case Hearing), Water Code;

Repealer: Section 5.557 (Direct Referral to Contested Case Hearing), Water Code;

Repealer: Section 5.558(c) (relating to providing that the clean coal project permit processes are not subject to certain requirements relating to a contested case hearing), Water Code;

Repealer: Sections 27.018(c) (relating to evidence of proper notice regarding the contested case hearing and prohibiting TCEQ from proceeding with receipt of testimony until there is compliance with this subsection) and (e) (relating to certain evidence that must be on the record of the proceeding before any testimony is heard in a contested case regarding an application for certain permits), Water Code;

Repealer: Section 27.0513(f) (relating to providing that applications for uranium mining with certain approvals are subject to certain public notice and contested hearing requirements), Water Code; and

Repealer: Section 28.028 (Hearing on Permit Application), Water Code.

SECTION 40. (a) Requires the chief administrative law judge of SOAH, not later than January 1, 2014, to adopt rules to implement Subchapter J, Chapter 2001, Government Code, as added by this Act, and Section 2003.047, Government Code, as amended by this Act.

(b) Provides that the changes in law made by this Act apply only to an application for a permit to which Subchapter J, Chapter 2001, Government Code, as added by this Act, applies that is filed on or after the date the rules described in Subsection (a) of this section take effect. Provides that an application for a permit filed before the date the rules described by Subsection (a) of this section take effect is governed by the law in effect on the date of filing, and that law is continued in effect for that purpose.

SECTION 41. Effective date: September 1, 2013.