

Fact Sheet on Bills further limiting public participation in TCEQ hearings

[HB 1865 \(Morrison\)](#) Senate companion: SB 709 (Fraser)

Primary Bill on TCEQ Contested Case Hearings

- Transfers burden of proof from the permit Applicant to protesting members of the public by declaring Draft Permit to be prima facie evidence that the permit, as drafted, should be issued (One practical consequence of this is that, at the hearing, the people protesting the permit will have to have technical witnesses and will have to offer their witnesses first, without having had a chance to ask any questions of the Applicant's "experts." The Applicant and TCEQ may later have witnesses, but will not have to have any witnesses, at all; they can just rely on the earlier paperwork. Sometimes, the witnesses for the Applicant and TCEQ are honest and, if asked under oath, actually give answers that are helpful to the protesting members of the public.)
- Limits issues referred to "discrete" issues (Is "I am worried about air pollution, because my son has asthma" discrete, or do you have to be worried about PM2.5, or NOx, or NOx in the summer in order to have a "discrete" issue?)
- Limits length of any hearing schedule (including direct referral) to 180 days from preliminary hearing to Proposal for Decision (Presently, the SOAH reserves 60 days for writing the PFD; the Applicant's prefiled testimony is filed at least two months before the end of the hearing on the merits, and all discovery of the Applicant is – because of a bad law passed in 2011 – cut off, then; so, protesting members of the public will have roughly two months to initiate and complete discovery of the Applicant, who, after all, has all the facts and has had many months or years to build its case.)
- Codifies a still-on-appeal court decision granting TCEQ nearly unbridled discretion on "affected person" determinations
- Requires an association to identify its affected members in the association's hearing request
- Limits issues for hearing on the merits to those issues raised during comment period by someone who requests a hearing on those issues (So, an issue that is raised for the first time by a TCEQ Commissioner or at the TCEQ commissioners' meeting cannot be referred to SOAH, and an association of neighbors formed after the comment period has closed will not be able to participate in the hearing on the merits, since it presented no comments.)

[HB 1113 \(Clardy\)](#), Senate Companion: SB 941 (Creighton)

Broadens TCEQ's discretion to deny "affected person" status

- Codifies a still-on-appeal court decision to further limit the access of protesting citizens to the contested hearing process
- Provides that TCEQ's decision about who may be a party to a hearing is "discretionary" and may only be reversed, if it is "completely" unreasonable. (So, a merely unreasonable decision cannot be reversed and an arbitrary and capricious decision cannot be reversed.)

[HB 1247 \(Smith\)](#)

This bill is basically like HB 1865, but it is slightly worse, because it adds one more burden for protesting members of the public:

- If the Applicant intentionally withheld or misrepresented information relevant to its permit Application, that is OK, unless a member of the protesting public can prove by a preponderance of the evidence the “intentional” nature of the withholding and that the withholding “likely” would have resulted in the TCEQ’s denial of the permit application.

If you cannot come, please call or email the members of the House Environmental Regulation Committee. Ask for the person that handles environmental issues and explain a little bit about your experience with the Contested Case Hearing process and ask them to relay to the legislator that you want them to oppose HB 1865, HB 1113 and HB 1247. Below is the list of committee members and their contact info.

Rep.	Jason	Isaac	jason.isaac@house.state.tx.us	512-463-0647	Hays, Blanco Brazos, Falls,
Rep.	Kyle	Kacal	kyle.kacal@house.state.tx.us	512-463-0412	Limestone, McClennan, Robertson
Rep.	Ken	King	ken.king@house.state.tx.us	512-463-0736	Panhandle/West TX
Rep.	Phil	King	phil.king@house.state.tx.us	512-463-0738	Parker, Wise Co. Bee, San Patricio, Jim Wells, Kleberg
Rep.	J.D.	Lozano	jm.lozano@house.state.tx.us	512-463-0463	Victoria, Aransas, Calhoun, DeWitt, Goliad, Refugio
Chair	Geanie	Morrison	geanie.morrison@house.state.tx.us	512-463-0456	Missouri City, Ft. Bend Co.
Rep.	Ron	Reynolds	ron.reynolds@house.state.tx.us	512-463-0494	SE Travis Co.
Vice-chair	Eddie	Rodriguez	eddie.rodriguez@house.state.tx.us	512-463-0674	
Rep.	Ed	Thompson	ed.thompson@house.state.tx.us	512-463-0707	Pearland, Brazoria Co.