

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: August 19, 2015

DATE OF REQUEST: July 31, 2015

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2015-0868-RUL. Consideration for publication of, and hearing on, proposed amended Section 20.15 of 30 TAC Chapter 20, Rulemaking.

The proposed rulemaking would implement House Bill 763, 84th Texas Legislature, 2015, Regular Session, by amending Section 20.15 to: specifically provide that only an "interested person" may submit a petition for the adoption of rules, and define "interested person" in the context of rule petitions. (Kathy Humphreys) (Rule Project No. 2015-023-020-LS)

Caroline Sweeney
Deputy Director

Robert Martinez
Division Director

Derek Baxter
Agenda Coordinator

Copy to CCC Secretary? NO

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 31, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Caroline Sweeney, Deputy Director
Office of Legal Services

Docket No.: 2015-0868-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 20, Rulemaking
HB 763: Petition for Rulemaking Adoption
Rule Project No. 2015-023-020-LS

Background and reason(s) for the rulemaking:

This rulemaking is required to implement House Bill (HB) 763, 84th Texas Legislature, 2015, authored by Representative Susan King, which provides the definition of "interested person" for the purposes of filing a petition for rulemaking.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking will clarify that rule petitions must be filed by an interested person, and defines an interested person as: a Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas that is not a state agency. The rulemaking also replaces the acronym APA with the term "Administrative Procedure Act."

B.) Scope required by federal regulations or state statutes:

HB 763 amends Texas Government Code, §2001.021 by defining what is an "interested person" for purposes of filing a petition for rulemaking.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

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Statutory authority:

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Government Code, §2001.021, concerning Petition for Adoption of Rules.

Effect on the:

A.) Regulated community:

Because of the limited scope of the rulemaking, there should not be any impact to the regulated community.

B.) Public:

This rule implements the change to the Administrative Procedure Act made by HB 763. The rule has no separate effect, except to provide guidance to the public.

C.) Agency programs:

Because of the limited scope of the rulemaking, there should not be any impact to agency programs.

Stakeholder meetings:

A stakeholder meeting is not scheduled for this rulemaking; however, a public hearing is scheduled for this rulemaking on September 9, 2015.

Potential controversial concerns and legislative interest:

At this time there are no controversial issues with this rulemaking. The only legislative interest is that this rulemaking implements HB 763.

Will this rulemaking affect any current policies or require development of new policies?

The Texas Register Team will need to verify that a person who submits a petition for rulemaking is an interested person as defined by the rule. No other new policies will be

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required.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rulemaking does not go forward, the Texas Register Team could verify that a person who submits a petition for rulemaking is an "interested person" as defined by the Texas Govt. Code. This approach, however, would not provide persons without knowledge of the Administrative Procedure Act with guidance regarding who can submit petitions for rulemaking.

Key points in the proposal rulemaking schedule

Anticipated proposal date: August 19, 2015

Anticipated *Texas Register* publication date: September 4, 2015

Anticipated public hearing date (if any): September 9, 2015

Anticipated public comment period: September 4 - October 5, 2015

Anticipated adoption date: December 9, 2015

Agency contacts:

Kathy Humphreys, Rule Project Manager, (512) 239-3417, Environmental Law Division
Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

HB 763

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Stephen Tatum
Office of General Counsel
Kathy Humphreys
Derek Baxter

AN ACT

relating to a petition to a state agency for adoption of rules.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2001.021, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) A state agency by rule shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition. If a state agency requires signatures for a petition under this section, at least 51 percent of the total number of signatures required must be of residents of this state.

(d) For the purposes of this section, an interested person must be:

(1) a resident of this state;

(2) a business entity located in this state;

(3) a governmental subdivision located in this state;

or

(4) a public or private organization located in this state that is not a state agency.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this

H.B. No. 763

1 Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 763 was passed by the House on May 5, 2015, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 763 was passed by the Senate on May 23, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §20.15.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking implements House Bill (HB) 763, 84th Texas Legislature, 2015, authored by Representative Susan King, which provides the definition of "interested person" for the purposes of filing a petition for rulemaking.

Section Discussion

§20.15, Petition for Adoption of Rules

The commission proposes to amend subsection (a) to implement new subsection (d) of Texas Government Code, §2001.021 in Section 1 of HB 763. HB 763 Section 1, requires that a petition for rulemaking be filed by an interested person, and defines interested person as: Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas. HB 763 also specifically excludes state agencies from the definition of "interested person." For clarity, the existing subsection (a) has been divided into two subsections. The specific requirements regarding the contents of a petition for rulemaking have been moved to subsection (b) and the remaining subsections have been relettered.

Additionally, in subsection (a) the commission proposes to add the word "interested" to

clarify that only interested persons may file a petition for rulemaking.

The commission proposes to amend subsection (c) by providing that a petition may be denied for failure to comply with the requirements of subsection (a) or (b).

The commission also proposes to amend subsection (d) by replacing the acronym APA with Administrative Procedure Act.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government due to limiting the definition of "interested person" for the purposes of filing a petition for rulemaking.

The proposed rule implements HB 763, 84th Texas Legislature, 2015, and provides the definition of "interested person" for the purposes of filing a petition for rulemaking. The proposed amendment to subsection (a) would implement the amendments to Texas Government Code, §2001.021 in HB 763, Section 1. HB 763 Section 1, requires that a petition for rulemaking be filed by an interested person, and defines interested person as: Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas. HB 763 also

specifically excludes state agencies from the definition of "interested person."

The proposed rule will limit the type of person that can petition the TCEQ for rulemaking. No fiscal implications are anticipated for units of state or local government by defining the scope of persons that can file a petition for rulemaking.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rule. The proposed rule provides the definition of "interested person" for the purposes of filing a petition for rulemaking. The proposed rule would require that a petition for rulemaking be filed by an interested person, and defines interested person as: Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas. No fiscal implications are anticipated for individuals or businesses by defining the scope of persons that can file a petition for rulemaking.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on a large business. The proposed rule will limit the type of person that can petition the TCEQ for rulemaking. No fiscal implications are anticipated for businesses as a result of defining the scope of persons that can file a petition for rulemaking.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 20 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, the rulemaking revises procedural rules regarding who may submit a petition for rulemaking to the commission. The primary purpose of the proposed rulemaking is to implement changes made to the Texas Government Code in HB 763.

The rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendment to Chapter 20 revises procedural rules regarding the persons that may submit a rulemaking petition to the commission and are procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the Texas Government Code in HB 763. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment to Chapter 20 revises procedural rules regarding the persons that may submit a rulemaking petition to the commission. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action.

Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 29, 2015 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-023-020-LS. The comment period closes on October 5, 2015.

Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

§20.15

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Government Code, §2001.021, concerning Petition for Adoption of Rules.

The proposed amendment implements Texas Government Code, §2001.021, Petition for Adoption of Rules, and HB 763 (84th Texas Legislature, 2015).

§20.15. Petition for Adoption of Rules.

(a) Any interested person may petition the commission to request the adoption of a rule. For the purposes of this section, an interested person must be:

(1) a resident of Texas;

(2) a business entity located in Texas;

(3) a governmental subdivision located in Texas; or

(4) a public or private organization located in Texas that is not a Texas state agency.

(b) Petitions shall be submitted in writing to: Executive Director, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

(1) each rule requested must be submitted by separate petition;

(2) each petition must state the name and address of the petitioner;

(3) each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(c) [(b)] A petition may be denied for failure to comply with the requirements of subsection (a) or (b) of this section.

(d) [(c)] Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the Administrative Procedure Act [APA].