

By: Morales Shaw

H.B. No. 2370

A BILL TO BE ENTITLED

AN ACT

relating to procedures for certain permit applications submitted to the Texas Commission on Environmental Quality.

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

SECTION 1. Section 2003.047, Government Code, is amended by adding Subsection (d-1) and amending Subsection (e-2) to read as follows:

(d-1) An applicant whose application has been referred for a contested case hearing to be held in accordance with this section may not request changes to the application after the 31st day before the date scheduled for the preliminary hearing on the application. If an applicant chooses to not proceed with the preliminary hearing on the application on or before the 31st day before the date scheduled for the preliminary hearing, the applicant must withdraw the application with or without prejudice in accordance with commission rule. If an applicant who has withdrawn an application without prejudice subsequently resubmits a revised application, the applicant must comply with applicable notice and other requirements in effect on the date the revised application is submitted to the commission. This subsection does not apply to a change made to an application for which:

(1) a preliminary hearing has been held and parties to the hearing have been named;

(2) all parties to the hearing have agreed in writing

1 to the proposed changes; and

2 (3) the applicant has complied with applicable notice
3 requirements.

4 (e-2) For a matter referred under Section 5.556 or 5.557,
5 Water Code, the administrative law judge must complete the
6 proceeding and provide a proposal for decision to the commission
7 not later than the earlier of:

8 (1) the 270th [~~180th~~] day after the date of the
9 preliminary hearing; or

10 (2) the date specified by the commission.

11 SECTION 2. Section 382.058(c), Health and Safety Code, is
12 amended to read as follows:

13 (c) For purposes of this section, only a representative of a
14 school, place of worship, licensed day-care center, hospital, or
15 medical facility or a person [~~those persons actually~~] residing [~~in~~
16 ~~a permanent residence~~] within 440 yards of the proposed plant may
17 request a hearing under Section 382.056 as a person who may be
18 affected. The commission shall adopt rules establishing who
19 qualifies as a representative of a school, place of worship,
20 licensed day-care center, hospital, or medical facility under this
21 section.

22 SECTION 3. Section 5.115(a-1), Water Code, is amended to
23 read as follows:

24 (a-1) The commission shall adopt rules specifying factors
25 which must be considered in determining whether a person is an
26 affected person in any contested case arising under the air, waste,
27 or water programs within the commission's jurisdiction and whether

1 an affected association is entitled to standing in contested case
2 hearings. For a matter referred under Section 5.556, the
3 commission:

4 (1) may consider:

5 (A) ~~[the merits of the underlying application,~~
6 ~~including whether the application meets the requirements for permit~~
7 ~~issuance,~~

8 ~~[(B)]~~ the likely impact of regulated activity on
9 the health, safety, and use of the property of the hearing
10 requestor;

11 (B) ~~[(C)]~~ the administrative record, including
12 the permit application and any supporting documentation;

13 (C) ~~[(D)]~~ the analysis and opinions of the
14 executive director; and

15 (D) ~~[(E)]~~ any other expert reports, affidavits,
16 opinions, or data submitted on or before any applicable deadline to
17 the commission by the executive director, the applicant, or a
18 hearing requestor; and

19 (2) may not find that:

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

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

1 SECTION 4. Section 5.552, Water Code, is amended by
2 amending Subsection (b) and adding Subsection (b-1) to read as
3 follows:

4 (b) Not later than the 30th day after the date the executive
5 director determines the application to be administratively
6 complete:

7 (1) the applicant shall publish notice of intent to
8 obtain a permit at least once in the newspaper of largest
9 circulation in the county in which the facility to which the
10 application relates is located or proposed to be located or, if the
11 facility to which the application relates is located or proposed to
12 be located in a municipality, at least once in a newspaper of
13 general circulation in the municipality; ~~and~~

14 (2) the chief clerk of the commission shall mail
15 notice of intent to obtain a permit to:

16 (A) the state senator and representative who
17 represent the general area in which the facility is located or
18 proposed to be located;

19 (B) the mayor and health authorities of the
20 municipality in which the facility is located or proposed to be
21 located;

22 (C) the county judge and health authorities of
23 the county in which the facility is located or proposed to be
24 located; and

25 (D) the river authority in which the facility is
26 located or proposed to be located if the application is under
27 Chapter 26, Water Code; and

1 (3) the commission shall post a copy of the
2 application on a publicly accessible Internet website.

3 (b-1) The commission shall post a copy of the application as
4 provided by Subsection (b)(3) on the same day that the chief clerk
5 of the commission mails the notice as provided by Subsection
6 (b)(2). The commission:

7 (1) shall:

8 (A) post any subsequent revision or supplement to
9 the application as the revision or supplement becomes available;
10 and

11 (B) maintain the posting until the commission
12 takes final action on the application; and

13 (2) may not penalize the applicant in the application
14 process if the commission fails to post or maintain the posting of
15 the application materials.

16 SECTION 5. The following provisions are repealed:

17 (1) Sections 2003.047(i-1), (i-2), and (i-3),
18 Government Code; and

19 (2) Section 382.0291(d), Health and Safety Code.

20 SECTION 6. The changes in law made by this Act apply only to
21 an application submitted to the Texas Commission on Environmental
22 Quality on or after the effective date of this Act. An application
23 submitted to the Texas Commission on Environmental Quality before
24 the effective date of this Act is governed by the law in effect at
25 the time the application was filed, and the former law is continued
26 in effect for that purpose.

27 SECTION 7. This Act takes effect September 1, 2021.