

1-1 By: Lucio III (Senate Sponsor - Fraser) H.B. No. 3544  
1-2 (In the Senate - Received from the House May 6, 2009;  
1-3 May 7, 2009, read first time and referred to Committee on State  
1-4 Affairs; May 20, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 May 20, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3544 By: Fraser

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to electronic notices by the Texas Commission on  
1-11 Environmental Quality, electronically stored information provided  
1-12 by a governmental body, and confidentiality of e-mail addresses  
1-13 provided to a governmental body.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 5.128, Water Code, is amended to read as  
1-16 follows:

1-17 Sec. 5.128. ELECTRONIC REPORTING TO COMMISSION; ELECTRONIC  
1-18 TRANSMISSION OF INFORMATION BY COMMISSION; REDUCTION OF DUPLICATE  
1-19 REPORTING. (a) The commission shall encourage the use of  
1-20 electronic reporting through the Internet, to the extent  
1-21 practicable, for reports required by the commission.  
1-22 Notwithstanding any other law, the commission may:

1-23 (1) adjust fees as necessary to encourage electronic  
1-24 reporting and the use of the commission's electronic document  
1-25 receiving system. An electronic report must be submitted in a  
1-26 format prescribed by the commission. The commission may consult  
1-27 with the Department of Information Resources on developing a simple  
1-28 format for use in implementing this subsection; and

1-29 (2) utilize electronic means of transmission of  
1-30 information, including notices, orders, and decisions issued or  
1-31 sent by the commission.

1-32 (b) The commission shall strive to reduce duplication in  
1-33 reporting requirements throughout the agency.

1-34 SECTION 2. Sections 11.31(c), (d), (e), and (i), Tax Code,  
1-35 are amended to read as follows:

1-36 (c) In applying for an exemption under this section, a  
1-37 person seeking the exemption shall present in a permit application  
1-38 or permit exemption request to the executive director of the Texas  
1-39 [~~Natural Resource Conservation~~] Commission on Environmental  
1-40 Quality information detailing:

1-41 (1) the anticipated environmental benefits from the  
1-42 installation of the facility, device, or method for the control of  
1-43 air, water, or land pollution;

1-44 (2) the estimated cost of the pollution control  
1-45 facility, device, or method; and

1-46 (3) the purpose of the installation of such facility,  
1-47 device, or method, and the proportion of the installation that is  
1-48 pollution control property.

1-49 If the installation includes property that is not used wholly  
1-50 for the control of air, water, or land pollution, the person seeking  
1-51 the exemption shall also present such financial or other data as the  
1-52 executive director requires by rule for the determination of the  
1-53 proportion of the installation that is pollution control property.

1-54 (d) Following submission of the information required by  
1-55 Subsection (c), the executive director of the Texas [~~Natural~~  
1-56 ~~Resource Conservation~~] Commission on Environmental Quality shall  
1-57 determine if the facility, device, or method is used wholly or  
1-58 partly as a facility, device, or method for the control of air,  
1-59 water, or land pollution. As soon as practicable, the executive  
1-60 director shall send notice by regular mail or by electronic means to  
1-61 the chief appraiser of the appraisal district for the county in  
1-62 which the property is located that the person has applied for a  
1-63 determination under this subsection. The executive director shall

2-1 issue a letter to the person stating the executive director's  
 2-2 determination of whether the facility, device, or method is used  
 2-3 wholly or partly to control pollution and, if applicable, the  
 2-4 proportion of the property that is pollution control property. The  
 2-5 executive director shall send a copy of the letter by regular mail  
 2-6 or by electronic means to the chief appraiser of the appraisal  
 2-7 district for the county in which the property is located.

2-8 (e) Not later than the 20th day after the date of receipt of  
 2-9 the letter issued by the executive director, the person seeking the  
 2-10 exemption or the chief appraiser may appeal the executive  
 2-11 director's determination to the Texas ~~[Natural Resource~~  
 2-12 ~~Conservation]~~ Commission on Environmental Quality. The commission  
 2-13 shall consider the appeal at the next regularly scheduled meeting  
 2-14 of the commission for which adequate notice may be given. The  
 2-15 person seeking the determination and the chief appraiser may  
 2-16 testify at the meeting. The commission may remand the matter to the  
 2-17 executive director for a new determination or deny the appeal and  
 2-18 affirm the executive director's determination. On issuance of a  
 2-19 new determination, the executive director shall issue a letter to  
 2-20 the person seeking the determination and provide a copy to the chief  
 2-21 appraiser as provided by Subsection (d). A new determination of the  
 2-22 executive director may be appealed to the commission in the manner  
 2-23 provided by this subsection. A proceeding under this subsection is  
 2-24 not a contested case for purposes of Chapter 2001, Government Code.

2-25 (i) A person seeking an exemption under this section shall  
 2-26 provide to the chief appraiser a copy of the letter issued by the  
 2-27 executive director of the Texas ~~[Natural Resource Conservation]~~  
 2-28 Commission on Environmental Quality under Subsection (d)  
 2-29 determining that the facility, device, or method is used wholly or  
 2-30 partly as pollution control property. The chief appraiser shall  
 2-31 accept a final determination by the executive director as  
 2-32 conclusive evidence that the facility, device, or method is used  
 2-33 wholly or partly as pollution control property.

2-34 SECTION 3. Section 11.31, Tax Code, is amended by adding  
 2-35 Subsections (g-1) and (n) to read as follows:

2-36 (g-1) The standards and methods for making a determination  
 2-37 under this section that are established in the rules adopted under  
 2-38 Subsection (g) apply uniformly to all applications for  
 2-39 determinations under this section, including applications relating  
 2-40 to facilities, devices, or methods for the control of air, water, or  
 2-41 land pollution included on a list adopted by the Texas Commission on  
 2-42 Environmental Quality under Subsection (k).

2-43 (n) The Texas Commission on Environmental Quality shall  
 2-44 establish a permanent advisory committee consisting of  
 2-45 representatives of industry, appraisal districts, taxing units,  
 2-46 and environmental groups, as well as members who are not  
 2-47 representatives of any of those entities but have substantial  
 2-48 technical expertise in pollution control technology and  
 2-49 environmental engineering, to advise the commission regarding the  
 2-50 implementation of this section. Chapter 2110, Government Code,  
 2-51 does not apply to the size, composition, or duration of the advisory  
 2-52 committee.

2-53 SECTION 4. As soon as practicable after the effective date  
 2-54 of this Act, the Texas Commission on Environmental Quality shall  
 2-55 appoint the initial members of the advisory committee under Section  
 2-56 11.31(n), Tax Code, as added by this Act.

2-57 SECTION 5. (a) The change in law made by Sections 11.31  
 2-58 (g-1) and (n), Tax Code, applies only to a determination that is not  
 2-59 final on the effective date of the Act on an application that was  
 2-60 filed on or after January 1, 2009.

2-61 (b) A determination that is not final on the effective date  
 2-62 of the Act on an application that was filed before January 1, 2009  
 2-63 is governed by law in effect before the effective date of this act,  
 2-64 and that law is continued in effect for that purpose.

2-65 SECTION 6. The change in law made by Section 11.31 (g-1) and  
 2-66 (n), Tax Code, applies only to ad valorem taxes imposed for a tax  
 2-67 year beginning on or after the effective date of this Act.

2-68 SECTION 7. Section 552.137, Government Code, is amended to  
 2-69 read as follows:

3-1 Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.  
3-2 (a) Except as otherwise provided by this section, an e-mail  
3-3 address of a member of the public that is provided for the purpose  
3-4 of communicating electronically with a governmental body is  
3-5 confidential and not subject to disclosure under this chapter.

3-6 (b) Confidential information described by this section that  
3-7 relates to a member of the public may be disclosed if the member of  
3-8 the public affirmatively consents to its release.

3-9 (c) Subsection (a) does not apply to an e-mail address:

3-10 (1) provided to a governmental body by a person who has  
3-11 a contractual relationship with the governmental body or by the  
3-12 contractor's agent;

3-13 (2) provided to a governmental body by a vendor who  
3-14 seeks to contract with the governmental body or by the vendor's  
3-15 agent;

3-16 (3) contained in a response to a request for bids or  
3-17 proposals, contained in a response to similar invitations  
3-18 soliciting offers or information relating to a potential contract,  
3-19 or provided to a governmental body in the course of negotiating the  
3-20 terms of a contract or potential contract; ~~[or]~~

3-21 (4) provided to a governmental body on a letterhead,  
3-22 coversheet, printed document, or other document made available to  
3-23 the public; or

3-24 (5) provided to a governmental body for the purpose of  
3-25 providing public comment on or receiving notices related to an  
3-26 application for a license as defined by Section 2001.003(2) of this  
3-27 Code, or receiving orders or decisions from a governmental body.

3-28 (d) Subsection (a) does not prevent a governmental body from  
3-29 disclosing an e-mail address for any reason to another governmental  
3-30 body or to a federal agency.

3-31 SECTION 8. Section 552.228, Government Code, is amended to  
3-32 read as follows:

3-33 Sec. 552.228. PROVIDING SUITABLE COPY OF PUBLIC INFORMATION  
3-34 WITHIN REASONABLE TIME. (a) It shall be a policy of a governmental  
3-35 body to provide a suitable copy of public information within a  
3-36 reasonable time after the date on which the copy is requested.

3-37 (b) If public information exists in an electronic or  
3-38 magnetic medium, the requestor may request a copy ~~[either on paper~~  
3-39 ~~or]~~ in an electronic medium, such as on diskette or on magnetic  
3-40 tape. A governmental body shall provide a copy in the requested  
3-41 medium if:

3-42 (1) the governmental body has the technological  
3-43 ability to produce a copy of the requested information in the  
3-44 requested medium;

3-45 (2) the governmental body is not required to purchase  
3-46 any software or hardware to accommodate the request; and

3-47 (3) provision of a copy of the information in the  
3-48 requested medium will not violate the terms of any copyright  
3-49 agreement between the governmental body and a third party.

3-50 (c) If a governmental body is unable to comply with a  
3-51 request to produce a copy of information in a requested medium for  
3-52 any of the reasons described by this section, the governmental body  
3-53 shall provide ~~[a paper copy of the requested information or]~~ a copy  
3-54 in another medium that is acceptable to the requestor. A  
3-55 governmental body is not required to copy information onto a  
3-56 diskette or other material provided by the requestor but may use its  
3-57 own supplies.

3-58 SECTION 9. The changes in law made to Section 552.228,  
3-59 Government Code, by this Act apply only to requests received by the  
3-60 agency on or after September 1, 2009. Requests received by the  
3-61 agency before the effective date of this Act are governed by the  
3-62 former law, and that law is continued in effect for that purpose.

3-63 SECTION 10. Except as otherwise provided by the Act, this  
3-64 Act takes effect September 1, 2009.

3-65 \* \* \* \* \*