

By: Ellis

S.B. No. 124

A BILL TO BE ENTITLED

AN ACT

relating to applications for permits issued by the Texas Commission on Environmental Quality for new or expanded facilities in certain low-income and minority communities.

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

SECTION 1. Subtitle G, Title 5, Health and Safety Code, is amended by adding Chapter 428 to read as follows:

CHAPTER 428. ENVIRONMENTAL JUSTICE COMMUNITIES

Sec. 428.001. DEFINITIONS. In this chapter:

(1) "Affecting facility" means a facility required to obtain a permit, as defined by Section 5.752, Water Code, under:

(A) Chapter 361 of this code;

(B) Chapter 382 of this code; or

(C) Chapter 26 or 27, Water Code.

(2) "Environmental justice community" means a United States census block group, as determined in accordance with the most recent United States census, for which:

(A) 30 percent or more of the noninstitutionalized population consists of persons who have an income below two hundred percent of the federal poverty level; or

(B) 50 percent or more of the population consists of members of racial minority or ethnic minority groups.

Sec. 428.002. ENVIRONMENTAL JUSTICE REPORT. (a) A person applying for a permit for a new affecting facility or the expansion

1 of an affecting facility must submit to the commission an
2 environmental justice report stating whether the facility or
3 expansion is to be located in an environmental justice community.
4 The report must include demographic information to support the
5 applicant's conclusion as to whether the facility or expansion is
6 to be located in an environmental justice community.

7 (b) The commission shall review the environmental justice
8 statement and conduct research to determine whether the facility or
9 expansion is to be located in an environmental justice community.
10 The commission shall publish its determination and findings in
11 writing.

12 Sec. 428.003. REQUIREMENTS FOR FACILITIES IN ENVIRONMENTAL
13 JUSTICE COMMUNITIES. If the commission determines that the
14 affecting facility or expansion is to be located in an
15 environmental justice community the applicant must, before the
16 commission may issue a permit:

17 (1) file with the commission a public participation
18 plan that meets the requirements of Section 428.004 and obtain the
19 commission's approval of the plan;

20 (2) consult with the chief elected official of the
21 municipality in which the facility or expansion is to be located to
22 evaluate the need for a community environmental benefit agreement
23 in accordance with Section 428.006; and

24 (3) participate in a public hearing under Section
25 428.005.

26 Sec. 428.004. PUBLIC PARTICIPATION PLAN. A public
27 participation plan must:

1 (1) contain measures to facilitate effective public
2 participation in the regulatory process, including measures that:

3 (A) allow residents of the environmental justice
4 community to have an appropriate opportunity to participate in
5 decisions about a proposed facility or expansion that may adversely
6 affect residents' environment or health; and

7 (B) seek out and facilitate the participation of
8 those who potentially would be affected by the facility or
9 expansion; and

10 (2) include a certification that the applicant will
11 undertake the measures contained in the plan.

12 Sec. 428.005. PUBLIC HEARING; NOTICE. (a) If the commission
13 determines that an affecting facility is to be located in an
14 environmental justice community, the commission shall conduct a
15 hearing to address issues of environmental justice posed by the
16 construction or expansion of the facility.

17 (b) Not more than 30 or less than 10 days before the date set
18 for the public hearing, the applicant shall:

19 (1) publish the date, time, location, and nature of
20 the hearing:

21 (A) in a newspaper having general circulation in
22 the area affected and any other appropriate local newspaper serving
23 the area;

24 (B) on the applicant's website, if applicable;
25 and

26 (C) on a reasonably visible sign posted at the
27 location of the proposed facility or extension, printed in English

1 and in each language spoken by at least 20 percent of the population
2 that resides within one-half mile of the proposed or existing
3 facility; and

4 (2) provide written notice of the date, time,
5 location, and nature of the meeting to:

6 (A) neighborhood and environmental groups in a
7 language appropriate for the target audience; and

8 (B) local and state elected officials who
9 represent the community.

10 (c) At the hearing, the person applying for the permit shall
11 make a reasonable and good faith effort to provide clear, accurate,
12 and complete information about the proposed facility or the
13 proposed expansion of a facility and the potential environmental
14 and health impacts of the facility or expansion on the community.

15 (d) The commission may not take any action on the person's
16 application for a permit before the 60th day after the date of the
17 hearing.

18 Sec. 428.006. COMMUNITY ENVIRONMENTAL BENEFIT AGREEMENTS.

19 (a) A municipality and the owner or developer of an affecting
20 facility may enter into a community environmental benefit agreement
21 under which the owner or developer agrees to mitigate adverse
22 impacts reasonably related to the facility, including impacts on
23 the environment, traffic, parking, and noise, by:

24 (1) developing real property that is to be used for the
25 facility or expansion in a way that mitigates the impacts; or

26 (2) providing financial resources for mitigation.

27 (b) Mitigation may include on-site and off-site

1 improvements, activities, and programs, including funding for
2 activities such as:

- 3 (1) providing environmental education;
- 4 (2) reducing diesel pollution;
- 5 (3) constructing bicycling and pedestrian trails;
- 6 (4) staffing parks;
- 7 (5) supporting and promoting urban forestry;
- 8 (6) supporting and promoting community gardens; and
- 9 (7) providing for any other negotiated benefit to the
10 environment in the environmental justice community.

11 (c) Before negotiating the terms of a community
12 environmental benefit agreement, the municipality shall provide a
13 reasonable and public opportunity for residents of the potentially
14 affected environmental justice community to be heard concerning the
15 need for, and terms of, an agreement.

16 SECTION 2. Chapter 428, Health and Safety Code, as added by
17 this Act, applies only to an application to construct or expand an
18 affecting facility in an environmental justice community as those
19 terms are defined by Section 428.001, Health and Safety Code, as
20 added by this Act, that is received by the Texas Commission on
21 Environmental Quality on or after the effective date of this Act.

22 SECTION 3. This Act takes effect September 1, 2009.