

By: Reynolds

H.B. No. 1558

A BILL TO BE ENTITLED

AN ACT

relating to applications for permits issued by the Texas Commission on Environmental Quality for certain 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) "Commission" means the Texas Commission on Environmental Quality.

(3) "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 200 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.

1       Sec. 428.002. ENVIRONMENTAL JUSTICE REPORT. (a) A person  
2 applying for a permit for a new affecting facility or the expansion  
3 of an affecting facility must submit to the commission an  
4 environmental justice report stating whether the facility or  
5 expansion is to be located in an environmental justice community.  
6 The report must include demographic information to support the  
7 applicant's conclusion as to whether the facility or expansion is  
8 to be located in an environmental justice community.

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

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

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

22           (2) consult with the chief elected official of the  
23 municipality in which the facility or expansion is to be located, or  
24 with the chief elected official of the county if the facility or  
25 expansion is to be located outside the boundaries of a  
26 municipality, to evaluate the need for a community environmental  
27 benefit agreement in accordance with Section 428.006; and

1           (3) participate in a public hearing under Section  
2 428.005.

3           Sec. 428.004. PUBLIC PARTICIPATION PLAN. A public  
4 participation plan must:

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

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

11           (B) seek out and facilitate the participation of  
12 those who potentially would be affected by the facility or  
13 expansion; and

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

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

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

23           (1) publish the date, time, location, and nature of  
24 the hearing:

25           (A) in a newspaper having general circulation in  
26 the area affected and any other appropriate local newspaper serving  
27 the area;

1                   (B) on the applicant's website, if applicable;

2 and

3                   (C) on a reasonably visible sign posted at the  
4 location of the proposed facility or expansion, printed in English  
5 and in each language spoken by at least 20 percent of the population  
6 that resides within one-half mile of the proposed or existing  
7 facility; and

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

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

12                   (B) local and state elected officials who  
13 represent the community.

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

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

22                   Sec. 428.006. COMMUNITY ENVIRONMENTAL BENEFIT AGREEMENTS.

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

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

3           (2) providing financial resources for mitigation.

4           (b) If an affecting facility will be located outside the  
5 boundaries of a municipality, a community environmental benefit  
6 agreement may be entered into between a county and the owner or  
7 developer of the affecting facility.

8           (c) Mitigation may include on-site and off-site  
9 improvements, activities, and programs, including funding for  
10 activities such as:

11           (1) providing environmental education;

12           (2) reducing diesel pollution;

13           (3) constructing bicycling and pedestrian trails;

14           (4) staffing parks;

15           (5) supporting and promoting urban forestry;

16           (6) supporting and promoting community gardens; and

17           (7) providing for any other negotiated benefit to the  
18 environment in the environmental justice community.

19           (d) Before negotiating the terms of a community  
20 environmental benefit agreement, the municipality or county shall  
21 provide a reasonable and public opportunity for residents of the  
22 potentially affected environmental justice community to be heard  
23 concerning the need for, and terms of, an agreement.

24           SECTION 2. Chapter 428, Health and Safety Code, as added by  
25 this Act, applies only to an application to construct or expand an  
26 affecting facility in an environmental justice community as those  
27 terms are defined by Section 428.001, Health and Safety Code, as

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1 added by this Act, that is received by the Texas Commission on  
2 Environmental Quality on or after the effective date of this Act.

3 SECTION 3. This Act takes effect September 1, 2011.