

1-1 By: Fraser S.B. No. 957
 1-2 (In the Senate - Filed February 28, 2013; March 12, 2013,
 1-3 read first time and referred to Committee on Natural Resources;
 1-4 April 22, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 3; April 22, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12		X		
1-13		X		
1-14	X			
1-15	X			
1-16			X	
1-17	X			
1-18	X			
1-19		X		

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 957 By: Fraser

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the procedure for action by the Texas Commission on
 1-24 Environmental Quality on applications for certain environmental
 1-25 permits.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Chapter 2001, Government Code, is amended by
 1-28 adding Subchapter J to read as follows:

1-29 SUBCHAPTER J. CONTESTED CASES: CERTAIN ENVIRONMENTAL PERMITS

1-30 Sec. 2001.301. PURPOSE. It is the public policy of this
 1-31 state and the purpose of this subchapter to continue leading the
 1-32 country in maintaining protection of public health and the
 1-33 environment while providing stability and certainty for the state's
 1-34 economy.

1-35 Sec. 2001.302. DEFINITIONS. In this subchapter:

1-36 (1) "Commission" means the Texas Commission on
 1-37 Environmental Quality.

1-38 (2) "Office" means the State Office of Administrative
 1-39 Hearings.

1-40 (3) "Permit" includes a permit, license, certificate,
 1-41 registration, approval, or other form of authorization issued by
 1-42 the commission, including the amendment or renewal of an
 1-43 authorization.

1-44 Sec. 2001.303. APPLICABILITY. This subchapter applies to a
 1-45 permit issued by the commission for:

1-46 (1) a national pollutant discharge elimination system
 1-47 permit under Chapter 26, Water Code;

1-48 (2) a Class I or Class III injection well permit under
 1-49 Chapter 27, Water Code;

1-50 (3) an in situ uranium mining production area
 1-51 authorization under Chapter 27, Water Code;

1-52 (4) a permit under Chapter 28, Water Code;

1-53 (5) a solid waste facility permit under Chapter 361,
 1-54 Health and Safety Code;

1-55 (6) a hazardous waste management facility permit under
 1-56 Chapter 361, Health and Safety Code;

1-57 (7) a preconstruction permit under Chapter 382, Health
 1-58 and Safety Code;

1-59 (8) a standard permit for a concrete batch plant under
 1-60 Chapter 382, Health and Safety Code; and

2-1 (9) a license under Chapter 401, Health and Safety
 2-2 Code.
 2-3 Sec. 2001.304. BURDEN OF PROOF. A person who requests a
 2-4 contested case hearing to which this subchapter applies has the
 2-5 burden of proof to demonstrate that:
 2-6 (1) the person has a right to a contested case hearing
 2-7 as an affected person as described by Section 5.115, Water Code; and
 2-8 (2) the commission erred in its decision on a permit
 2-9 application based on the issues and arguments raised by the person
 2-10 requesting the hearing during the public comment period.
 2-11 Sec. 2001.305. SCOPE OF REVIEW. (a) The scope of review of
 2-12 a contested case hearing under this subchapter is limited to the
 2-13 administrative record provided to the office by the chief clerk of
 2-14 the commission.
 2-15 (b) The office may not consider any issue outside of those
 2-16 described by Section 5.556, Water Code, unless the matter was
 2-17 directly referred to the office for a contested case hearing under
 2-18 Section 5.557, Water Code.
 2-19 Sec. 2001.306. PARTIES. A person may join as a party to a
 2-20 contested case hearing only if the person requested a contested
 2-21 case hearing in compliance with any applicable deadlines
 2-22 established by commission rule.
 2-23 Sec. 2001.307. HEARINGS. (a) In the event of a conflict
 2-24 between the provisions of this section and another provision of
 2-25 this chapter, this section prevails.
 2-26 (b) Not later than the 120th day after the date the office
 2-27 conducts a preliminary hearing on the matter, the office shall
 2-28 conclude the hearing and submit a proposal for decision to the
 2-29 commission that includes findings of fact and conclusions of law.
 2-30 The deadline prescribed by this subsection may not be extended
 2-31 unless all parties agree to an extension of time. An extension of
 2-32 time granted under this subsection may not exceed 60 days.
 2-33 SECTION 2. Subsection (d), Section 2003.024, Government
 2-34 Code, is amended to read as follows:
 2-35 (d) This section does not apply to hearings conducted:
 2-36 (1) by the environmental quality [~~natural resource~~
 2-37 ~~conservation~~] division or the utility division; or
 2-38 (2) under the administrative license revocation
 2-39 program.
 2-40 SECTION 3. The heading to Section 2003.047, Government
 2-41 Code, is amended to read as follows:
 2-42 Sec. 2003.047. ENVIRONMENTAL QUALITY [~~NATURAL RESOURCE~~
 2-43 ~~CONSERVATION~~] DIVISION.
 2-44 SECTION 4. Subsection (a), Section 2003.047, Government
 2-45 Code, is amended to read as follows:
 2-46 (a) The office shall establish an environmental quality [~~a~~
 2-47 ~~natural resource conservation~~] division to perform the contested
 2-48 case hearings of certain permit decisions for the Texas Commission
 2-49 on Environmental Quality [~~Natural Resource Conservation~~
 2-50 ~~Commission~~].
 2-51 SECTION 5. Section 2003.048, Government Code, is amended to
 2-52 read as follows:
 2-53 Sec. 2003.048. TEXAS [~~NATURAL RESOURCE CONSERVATION~~]
 2-54 COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. The office shall
 2-55 charge the Texas [~~Natural Resource Conservation~~] Commission on
 2-56 Environmental Quality a fixed annual fee rather than an hourly rate
 2-57 for services rendered by the office to the commission. The amount
 2-58 of the fee may not be less than the amount appropriated to the Texas
 2-59 [~~Natural Resource Conservation~~] Commission on Environmental
 2-60 Quality in the General Appropriations Act for payment to the
 2-61 environmental quality [~~natural resource conservation~~] division to
 2-62 conduct commission hearings. The amount of the fee shall be based
 2-63 on the costs of conducting the hearings, the costs of travel
 2-64 expenses and telephone charges directly related to the hearings,
 2-65 docketing costs, and other applicable administrative costs of the
 2-66 office including the administrative costs of the environmental
 2-67 quality [~~natural resource conservation~~] division. The office and
 2-68 the Texas [~~Natural Resource Conservation~~] Commission on
 2-69 Environmental Quality shall negotiate the amount of the fixed fee

3-1 biennially, subject to the approval of the governor, to coincide
3-2 with the commission's legislative appropriations request.

3-3 SECTION 6. Section 5.115, Water Code, is amended by adding
3-4 Subsections (a-1) and (a-2) to read as follows:

3-5 (a-1) An association is not entitled to standing in a
3-6 contested case hearing unless the association:

3-7 (1) expressly identifies each member of the
3-8 association who would otherwise have standing to request a hearing
3-9 in the member's own right; and

3-10 (2) submits with the hearing request documentation
3-11 demonstrating that:

3-12 (A) the interests of the association are germane
3-13 to the matter that is the subject of the contested case; and

3-14 (B) at least part of the association's purpose is
3-15 to contest permit applications.

3-16 (a-2) The commission shall deny a hearing request submitted
3-17 by an association that does not satisfy the requirements of
3-18 Subsection (a-1). The information required by Subsection (a-1) may
3-19 not be submitted after the hearing request.

3-20 SECTION 7. Subsection (a), Section 5.551, Water Code, is
3-21 amended to read as follows:

3-22 (a) This subchapter establishes procedures for providing
3-23 public notice, an opportunity for public comment, and an
3-24 opportunity for public hearing under Subchapters C-H and J, Chapter
3-25 2001, Government Code, regarding commission actions relating to a
3-26 permit issued under Chapter 26 or 27 of this code or Chapter 361,
3-27 Health and Safety Code. This subchapter is procedural and does not
3-28 expand or restrict the types of commission actions for which public
3-29 notice, an opportunity for public comment, and an opportunity for
3-30 public hearing are provided under Chapter 26 or 27 of this code or
3-31 Chapter 361, Health and Safety Code.

3-32 SECTION 8. Subchapter M, Chapter 5, Water Code, is amended
3-33 by adding Sections 5.5541 and 5.5551 to read as follows:

3-34 Sec. 5.5541. OBLIGATION TO RAISE ISSUES AND PROVIDE
3-35 INFORMATION DURING PUBLIC COMMENT PERIOD. (a) A person must raise
3-36 all reasonably ascertainable issues and submit all reasonably
3-37 available arguments supporting the person's position on the
3-38 executive director's preliminary decision before the close of the
3-39 public comment period.

3-40 (b) Supporting materials submitted during the public
3-41 comment period must be included in full in the administrative
3-42 record for the application and may not be incorporated by reference
3-43 unless the materials:

3-44 (1) are already part of the administrative record in
3-45 the same proceeding; or

3-46 (2) consist of:
3-47 (A) state or federal statutes or rules; or
3-48 (B) generally available reference materials.

3-49 (c) The commission by rule shall establish procedures to
3-50 make supporting materials not already included in the
3-51 administrative record available to the executive director.

3-52 Sec. 5.5551. UNCONTESTED APPLICATIONS. (a) If a contested
3-53 case hearing has not been requested in the time and manner required
3-54 by applicable law, that application is considered uncontested and
3-55 the executive director may issue a final decision on the permit
3-56 application.

3-57 (b) A person may file with the commission a motion to
3-58 overturn as described by commission rule to challenge an executive
3-59 director's final decision under this section.

3-60 (c) A final permit decision issued under this section is not
3-61 subject to a contested case hearing.

3-62 SECTION 9. Section 5.556, Water Code, is amended by adding
3-63 Subsection (g) to read as follows:

3-64 (g) Granting a request for a contested case hearing on a
3-65 draft permit issued by the executive director creates a rebuttable
3-66 presumption that the draft permit:

3-67 (1) meets all state and federal legal and technical
3-68 requirements; and

3-69 (2) is protective of human health and safety.

4-1 SECTION 10. Subchapter M, Chapter 5, Water Code, is amended
4-2 by adding Section 5.5571 to read as follows:

4-3 Sec. 5.5571. FINAL COMMISSION DECISION. (a) Not later
4-4 than the 45th day after the date the commission receives a proposal
4-5 for decision from the State Office of Administrative Hearings, the
4-6 commission shall consider the proposal.

4-7 (b) In considering the proposal for decision, the
4-8 commission shall limit each of the parties in the proceeding to:

4-9 (1) one exceptions brief; and

4-10 (2) one reply brief that may only include arguments in
4-11 reply to another party's exceptions.

4-12 (c) An exceptions brief must be submitted not later than the
4-13 20th day after the date the commission receives the proposal for
4-14 decision. A reply brief must be submitted not later than the 30th
4-15 day after the date the commission receives the proposal for
4-16 decision.

4-17 SECTION 11. The changes in law made by this Act apply only
4-18 to an application for a permit that is filed with the Texas
4-19 Commission on Environmental Quality on or after the effective date
4-20 of this Act. An application for a permit filed before the effective
4-21 date of this Act is governed by the law in effect on the date of
4-22 filing, and that law is continued in effect for that purpose.

4-23 SECTION 12. This Act takes effect September 1, 2013.

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