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H.B. No. 1865

Substitute the following for H.B. No. 1865:

By: Morrison

C.S.H.B. No. 1865

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures for certain environmental permit
3 applications.

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

5 SECTION 1. Section 2003.047, Government Code, is amended by
6 adding Subsections (e-1), (e-2), (i-1), (i-2), and (i-3) to read as
7 follows:

8 (e-1) This subsection applies only to a matter referred
9 under Section 5.556, Water Code. Each issue referred by the
10 commission must have been raised by an affected person in a comment
11 submitted by that affected person in response to a permit
12 application in a timely manner. The list of issues submitted under
13 Subsection (e) must:

14 (1) be detailed and complete; and

15 (2) contain either:

16 (A) only factual questions; or

17 (B) mixed questions of fact and law.

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

22 (1) the 180th day after the date of the preliminary
23 hearing; or

24 (2) the date specified by the commission or the

1 administrative law judge, if applicable, under Subsection (e).

2 (i-1) In a contested case regarding a permit application
3 referred under Section 5.556 or 5.557, Water Code, the filing with
4 the office of the application, the draft permit prepared by the
5 executive director of the commission, the preliminary decision
6 issued by the executive director, and other sufficient supporting
7 documentation in the administrative record of the permit
8 application establishes a prima facie demonstration that:

9 (1) the draft permit meets all state and federal legal
10 and technical requirements; and

11 (2) a permit, if issued consistent with the draft
12 permit, would protect human health and safety, the environment, and
13 physical property.

14 (i-2) A party may rebut a demonstration under Subsection
15 (i-1) by presenting evidence that:

16 (1) relates to a matter referred under Section 5.557,
17 Water Code, or an issue included in a list submitted under
18 Subsection (e) in connection with a matter referred under Section
19 5.556, Water Code; and

20 (2) demonstrates that:

21 (A) the draft permit violates a specific state or
22 federal legal or technical requirement; or

23 (B) the draft permit, if issued, would not
24 protect human health and safety, the environment, or physical
25 property.

26 (i-3) If in accordance with Subsection (i-2) a party rebuts
27 a presumption established under Subsection (i-1), the applicant and

1 the executive director may present additional evidence to support
2 the draft permit.

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

6 (a) For the purpose of an administrative hearing held by or
7 for the commission involving a contested case, "affected person,"
8 or "person affected," or "person who may be affected" means a person
9 who has a personal justiciable interest related to a legal right,
10 duty, privilege, power, or economic interest affected by the
11 administrative hearing. An interest common to members of the
12 general public does not qualify as a personal justiciable interest.

13 (a-1) The commission shall adopt rules specifying factors
14 which must be considered in determining whether a person is an
15 affected person in any contested case arising under the air, waste,
16 or water programs within the commission's jurisdiction and whether
17 an affected association is entitled to standing in contested case
18 hearings. For a matter referred under Section 5.556, the
19 commission:

20 (1) may consider:

21 (A) the merits of the underlying application,
22 including whether the application meets the requirements for permit
23 issuance;

24 (B) the likely impact of regulated activity on
25 the health, safety, and use of the property of the hearing
26 requestor;

27 (C) the administrative record, including the

1 permit application and any supporting documentation;

2 (D) the analysis and opinions of the executive
3 director; and

4 (E) any other expert reports, affidavits,
5 opinions, or data submitted on or before any applicable deadline to
6 the commission by the executive director, the applicant, or a
7 hearing requestor; and

8 (2) may not find that:

9 (A) a group or association is an affected person
10 unless the group or association identifies, by name and physical
11 address in a timely request for a contested case hearing, a member
12 of the group or association who would be an affected person in the
13 person's own right; or

14 (B) a hearing requestor is an affected person
15 unless the hearing requestor timely submitted comments on the
16 permit application.

17 SECTION 3. Section 5.228(c), Water Code, is amended to read
18 as follows:

19 (c) The executive director shall participate as a party in
20 contested case permit hearings before the commission or the State
21 Office of Administrative Hearings to:

22 (1) provide information to complete the
23 administrative record; ~~and~~

24 (2) support the executive director's position
25 developed in the underlying proceeding; and

26 (3) present evidence supporting a draft permit under
27 Section 2003.047(i-3), Government Code.

1 SECTION 4. (a) The changes in law made by this Act apply
2 only to a permit application that is filed with the Texas Commission
3 on Environmental Quality on or after the effective date of this Act.
4 A permit application filed before the effective date of this Act is
5 governed by the law in effect when the permit application was filed,
6 and the former law is continued in effect for that purpose.

7 (b) Not later than January 1, 2016, the Texas Commission on
8 Environmental Quality shall adopt rules to implement the changes in
9 law made by this Act. For an application filed after the effective
10 date of this Act but before the adoption of rules to implement the
11 changes in law made by this Act, the commission shall provide
12 sufficient notice to the applicant and other participants in the
13 permit proceeding that the changes in law made by this Act apply to
14 the proceeding.

15 SECTION 5. This Act takes effect September 1, 2015.