

By: Morrison

H.B. No. 1865

A BILL TO BE ENTITLED

AN ACT

relating to environmental permitting procedures for applications filed with the Texas Commission on Environmental Quality.

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

SECTION 1. Section 2003.047, Government Code, is amended by adding Subsections (d-1) and (d-2) and amending Subsections (e) and (e-1) to read as follows:

(d-1) The applicant's filing with the administrative law judge of the draft permit, the executive director's preliminary decision, and any other supporting documentation in the administrative record is a prima facie demonstration that:

(1) the draft permit meets all state and federal statutory, regulatory and technical requirements; and

(2) a permit issued in the same form of the draft permit would be protective of the public's health and physical property and the environment.

(d-2) After the applicant has made a prima facie demonstration pursuant to Subsection (d-1), each protesting party shall be given an opportunity to present evidence to demonstrate that the draft permit does not meet the requirements of Subsection (d-1) based on the number and scope of issues that have been referred by the commission. After the submission of evidence by the protesting parties, the applicant and the executive director may present evidence to support the draft permit.

1 (e) In referring a matter for hearing pursuant to Water Code  
2 Section 5.556, the commission shall provide to the administrative  
3 law judge a discrete list of disputed factual issues and [~~—The~~  
4 ~~commission~~] shall specify the date by which the] administrative law  
5 judge must [~~is expected to~~] complete the proceeding and provide a  
6 proposal for decision to the commission, which may not exceed 180  
7 days after the preliminary hearing.

8 (e-1) In matters referred to a hearing pursuant to Water  
9 Code 5.556 or 5.557, the administrative law judge:

10 (1) may extend the proceeding only if the  
11 administrative law judge determines that failure to grant an  
12 extension would deprive a party of due process or another  
13 constitutional right; [~~—The administrative law judge~~]

14 (2) subject to Subsection (e-1) (1), shall establish a  
15 docket control order designed to complete the proceeding and  
16 provide a proposal for decision no later than 180 days after the  
17 preliminary hearing or by the date specified by the commission,  
18 whichever is earlier.

19 SECTION 2. Section 5.556, Water Code, is amended by adding  
20 Subsection (c-1) to read as follows:

21 (c-1) In determining under Subsection (c) whether a person  
22 seeking a contested case hearing is an affected person, the  
23 commission:

24 (1) may weigh and resolve matters relating to the  
25 merits of the underlying application, including whether the  
26 application meets the requirements for issuance and the likely  
27 impact of the regulated activity on the health, safety, and use of

1 the property of the hearing requester;

2 (2) may evaluate the administrative record, including  
3 the permit application and any supporting documentation, the  
4 analysis and opinions of the executive director, and any other  
5 expert reports, affidavits, opinions, or data submitted to the  
6 commission by the executive director, the applicant or a hearing  
7 requester within the applicable deadlines to submit hearing  
8 requests and briefing to the commission;

9 (3) may not find that a group or association is an  
10 affected person unless the group or association identifies, by name  
11 and physical address in a timely request for a contested case  
12 hearing, a member who would be an affected person in the person's  
13 own right; and

14 (4) may not find that a hearing requester is an  
15 affected person unless the hearing requester timely submitted  
16 comments, and may only refer an issue pursuant to Subsection (d) if  
17 requested by the affected person who raised the issue in a timely  
18 submitted comment.

19 SECTION 3. The changes in law made by this Act apply only to  
20 an application for a permit that is filed with the Texas Commission  
21 on Environmental Quality on or after the effective date of this Act.  
22 An application for a permit filed before the effective date of this  
23 Act is governed by the law in effect on the date of filing, and that  
24 law is continued in effect for that purpose.

25 SECTION 4. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2015.