

By: Fraser, et al.
(Morrison, Bonnen of Brazoria, Deshotel, Harless,
Smith, et al.)

S.B. No. 709

A BILL TO BE ENTITLED

1 AN ACT
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), (e-3), (e-4), (i-1), (i-2), and
7 (i-3) to read as 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.

1 (e-3) The deadline specified by Subsection (e-2) may be
2 extended:

3 (1) by agreement of the parties with the approval of
4 the administrative law judge; or

5 (2) by the administrative law judge if the judge
6 determines that failure to extend the deadline would unduly deprive
7 a party of due process or another constitutional right.

8 (e-4) For the purposes of Subsection (e-3)(2), a political
9 subdivision has the same constitutional rights as an individual.

10 (i-1) In a contested case regarding a permit application
11 referred under Section 5.556 or 5.557, Water Code, the filing with
12 the office of the application, the draft permit prepared by the
13 executive director of the commission, the preliminary decision
14 issued by the executive director, and other sufficient supporting
15 documentation in the administrative record of the permit
16 application establishes a prima facie demonstration that:

17 (1) the draft permit meets all state and federal legal
18 and technical requirements; and

19 (2) a permit, if issued consistent with the draft
20 permit, would protect human health and safety, the environment, and
21 physical property.

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

24 (1) relates to a matter referred under Section 5.557,
25 Water Code, or an issue included in a list submitted under
26 Subsection (e) in connection with a matter referred under Section
27 5.556, Water Code; and

1 (2) demonstrates that:

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

4 (B) the draft permit, if issued, would not
5 protect human health and safety, the environment, or physical
6 property.

7 (i-3) If in accordance with Subsection (i-2) a party rebuts
8 a presumption established under Subsection (i-1), the applicant and
9 the executive director may present additional evidence to support
10 the draft permit.

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

14 (a) For the purpose of an administrative hearing held by or
15 for the commission involving a contested case, "affected person,"
16 or "person affected," or "person who may be affected" means a person
17 who has a personal justiciable interest related to a legal right,
18 duty, privilege, power, or economic interest affected by the
19 administrative hearing. An interest common to members of the
20 general public does not qualify as a personal justiciable interest.

21 (a-1) The commission shall adopt rules specifying factors
22 which must be considered in determining whether a person is an
23 affected person in any contested case arising under the air, waste,
24 or water programs within the commission's jurisdiction and whether
25 an affected association is entitled to standing in contested case
26 hearings. For a matter referred under Section 5.556, the
27 commission:

1 (1) may consider:

2 (A) the merits of the underlying application,
3 including whether the application meets the requirements for permit
4 issuance;

5 (B) the likely impact of regulated activity on
6 the health, safety, and use of the property of the hearing
7 requestor;

8 (C) the administrative record, including the
9 permit application and any supporting documentation;

10 (D) the analysis and opinions of the executive
11 director; and

12 (E) any other expert reports, affidavits,
13 opinions, or data submitted on or before any applicable deadline to
14 the commission by the executive director, the applicant, or a
15 hearing requestor; and

16 (2) may not find that:

17 (A) a group or association is an affected person
18 unless the group or association identifies, by name and physical
19 address in a timely request for a contested case hearing, a member
20 of the group or association who would be an affected person in the
21 person's own right; or

22 (B) a hearing requestor is an affected person
23 unless the hearing requestor timely submitted comments on the
24 permit application.

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

27 (c) The executive director shall participate as a party in

1 contested case permit hearings before the commission or the State
2 Office of Administrative Hearings to:

3 (1) provide information to complete the
4 administrative record; ~~and~~

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

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

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

15 (b) Not later than January 1, 2016, the Texas Commission on
16 Environmental Quality shall adopt rules to implement the changes in
17 law made by this Act. For an application filed after the effective
18 date of this Act but before the adoption of rules to implement the
19 changes in law made by this Act, the commission shall provide
20 sufficient notice to the applicant and other participants in the
21 permit proceeding that the changes in law made by this Act apply to
22 the proceeding.

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