

1-1 By: Fraser S.B. No. 709  
 1-2 (In the Senate - Filed February 23, 2015; March 2, 2015, read  
 1-3 first time and referred to Committee on Natural Resources and  
 1-4 Economic Development; April 7, 2015, reported adversely, with  
 1-5 favorable Committee Substitute by the following vote: Yeas 8,  
 1-6 Nays 1; April 7, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
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. 709 By: Fraser

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

1-23 relating to procedures for certain environmental permit  
 1-24 applications.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 2003.047, Government Code, is amended by  
 1-27 adding Subsections (e-1), (e-2), (i-1), (i-2), and (i-3) to read as  
 1-28 follows:

1-29 (e-1) This subsection applies only to a matter referred  
 1-30 under Section 5.556, Water Code. Each issue referred by the  
 1-31 commission must have been raised by an affected person in a comment  
 1-32 submitted by that affected person in response to a permit  
 1-33 application in a timely manner. The list of issues submitted under  
 1-34 Subsection (e) must:

1-35 (1) be detailed and complete; and

1-36 (2) contain either:

1-37 (A) only factual questions; or

1-38 (B) mixed questions of fact and law.

1-39 (e-2) For a matter referred under Section 5.556 or 5.557,  
 1-40 Water Code, the administrative law judge must complete the  
 1-41 proceeding and provide a proposal for decision to the commission  
 1-42 not later than the earlier of:

1-43 (1) the 180th day after the date of the preliminary  
 1-44 hearing; or

1-45 (2) the date specified by the commission or the  
 1-46 administrative law judge, if applicable, under Subsection (e).

1-47 (i-1) In a contested case regarding a permit application  
 1-48 referred under Section 5.556 or 5.557, Water Code, the filing with  
 1-49 the office of the application, the draft permit prepared by the  
 1-50 executive director of the commission, the preliminary decision  
 1-51 issued by the executive director, and other sufficient supporting  
 1-52 documentation in the administrative record of the permit  
 1-53 application establishes a prima facie demonstration that:

1-54 (1) the draft permit meets all state and federal legal  
 1-55 and technical requirements; and

1-56 (2) a permit, if issued consistent with the draft  
 1-57 permit, would protect human health and safety, the environment, and  
 1-58 physical property.

1-59 (i-2) A party may rebut a demonstration under Subsection  
 1-60 (i-1) by presenting evidence that:

2-1 (1) relates to a matter referred under Section 5.557,  
 2-2 Water Code, or an issue included in a list submitted under  
 2-3 Subsection (e) in connection with a matter referred under Section  
 2-4 5.556, Water Code; and

2-5 (2) demonstrates that:  
 2-6 (A) the draft permit violates a specific state or  
 2-7 federal legal or technical requirement; or  
 2-8 (B) the draft permit, if issued, would not  
 2-9 protect human health and safety, the environment, or physical  
 2-10 property.

2-11 (i-3) If in accordance with Subsection (i-2) a party rebuts  
 2-12 a presumption established under Subsection (i-1), the applicant and  
 2-13 the executive director may present additional evidence to support  
 2-14 the draft permit.

2-15 SECTION 2. Section 5.115, Water Code, is amended by  
 2-16 amending Subsection (a) and adding Subsection (a-1) to read as  
 2-17 follows:

2-18 (a) For the purpose of an administrative hearing held by or  
 2-19 for the commission involving a contested case, "affected person,"  
 2-20 or "person affected," or "person who may be affected" means a person  
 2-21 who has a personal justiciable interest related to a legal right,  
 2-22 duty, privilege, power, or economic interest affected by the  
 2-23 administrative hearing. An interest common to members of the  
 2-24 general public does not qualify as a personal justiciable interest.

2-25 (a-1) The commission shall adopt rules specifying factors  
 2-26 which must be considered in determining whether a person is an  
 2-27 affected person in any contested case arising under the air, waste,  
 2-28 or water programs within the commission's jurisdiction and whether  
 2-29 an affected association is entitled to standing in contested case  
 2-30 hearings. For a matter referred under Section 5.556, the  
 2-31 commission:

2-32 (1) may consider:

2-33 (A) the merits of the underlying application,  
 2-34 including whether the application meets the requirements for permit  
 2-35 issuance;

2-36 (B) the likely impact of regulated activity on  
 2-37 the health, safety, and use of the property of the hearing  
 2-38 requestor;

2-39 (C) the administrative record, including the  
 2-40 permit application and any supporting documentation;

2-41 (D) the analysis and opinions of the executive  
 2-42 director; and

2-43 (E) any other expert reports, affidavits,  
 2-44 opinions, or data submitted on or before any applicable deadline to  
 2-45 the commission by the executive director, the applicant, or a  
 2-46 hearing requestor; and

2-47 (2) may not find that:

2-48 (A) a group or association is an affected person  
 2-49 unless the group or association identifies, by name and physical  
 2-50 address in a timely request for a contested case hearing, a member  
 2-51 of the group or association who would be an affected person in the  
 2-52 person's own right; or

2-53 (B) a hearing requestor is an affected person  
 2-54 unless the hearing requestor timely submitted comments on the  
 2-55 permit application.

2-56 SECTION 3. Section 5.228(c), Water Code, is amended to read  
 2-57 as follows:

2-58 (c) The executive director shall participate as a party in  
 2-59 contested case permit hearings before the commission or the State  
 2-60 Office of Administrative Hearings to:

2-61 (1) provide information to complete the  
 2-62 administrative record; ~~and~~

2-63 (2) support the executive director's position  
 2-64 developed in the underlying proceeding; and

2-65 (3) present evidence supporting a draft permit under  
 2-66 Section 2003.047(i-3), Government Code.

2-67 SECTION 4. (a) The changes in law made by this Act apply  
 2-68 only to a permit application that is filed with the Texas Commission  
 2-69 on Environmental Quality on or after the effective date of this Act.

3-1 A permit application filed before the effective date of this Act is  
3-2 governed by the law in effect when the permit application was filed,  
3-3 and the former law is continued in effect for that purpose.

3-4 (b) Not later than January 1, 2016, the Texas Commission on  
3-5 Environmental Quality shall adopt rules to implement the changes in  
3-6 law made by this Act. For an application filed after the effective  
3-7 date of this Act but before the adoption of rules to implement the  
3-8 changes in law made by this Act, the commission shall provide  
3-9 sufficient notice to the applicant and other participants in the  
3-10 permit proceeding that the changes in law made by this Act apply to  
3-11 the proceeding.

3-12 SECTION 5. This Act takes effect September 1, 2015.

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