

By: Zaffirini

S.B. No. 2155

A BILL TO BE ENTITLED

AN ACT

relating to the issuance or amendment of a permit for a solid waste landfill facility or hazardous waste land disposal unit to be located in a special flood hazard area.

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

SECTION 1. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1232 to read as follows:

Sec. 361.1232. LIMITATION ON MUNICIPAL SOLID WASTE LANDFILL IN SPECIAL FLOOD HAZARD AREA.

(a) As used in this section, (1) "special flood hazard area" means the land in a floodplain subject to a 1 percent or greater chance of flooding in any given year as designated by the director or administrator of the Federal Emergency Management Agency; and (2) "facility" means all contiguous land and structures, other appurtenances (including drainage structures, groundwater monitoring wells, landfill gas probes, gate or scale houses), and improvements on land used for the storage, processing, management, or disposal of solid waste.

(b) The commission may not issue a permit for a new municipal solid waste landfill facility or a lateral expansion of an existing municipal solid waste landfill facility that is conditioned on the removal of (1) any part of the planned new municipal solid waste landfill facility from a special flood hazard area, or (2) any part of the planned lateral expansion of an

1 existing municipal solid waste facility from a special flood hazard
2 area.

3 (c) Except as provided by Subsection (d), the commission may
4 not issue a permit for a new municipal solid waste landfill facility
5 or for a lateral expansion of an existing municipal solid waste
6 landfill if any part of the facility is in a special flood hazard
7 area unless the applicant has obtained from the Federal Emergency
8 Management Agency a letter of map amendment demonstrating that the
9 location of the entire facility has been removed from the special
10 flood hazard area. A conditional letter of map revision issued by
11 the Federal Emergency Management Agency does not satisfy the
12 requirements of this subsection.

13 (d) The commission by rule may allow a new municipal solid
14 waste landfill facility, or the lateral expansion of an existing
15 municipal solid waste landfill facility, to be in a special flood
16 hazard area, but only if the applicant or permit holder
17 demonstrates, and the commission is satisfied and finds, that (1)
18 no other suitable site for the facility outside of the special flood
19 hazard area exists in the county in which the facility is or would
20 be located; (2) removing the proposed site for the facility from the
21 special flood hazard area would be prohibitively expensive; and (3)
22 the facility is designed and will operate to prevent the washout or
23 physical transport of any solid waste by a 100-year flood event.

24 SECTION 2. Section 361.098 of Subchapter C, Chapter 361,
25 Health and Safety Code, is amended to read as follows:

26 (a) As used in this section, (1) "special flood hazard area"
27 means the land in a floodplain subject to a 1 percent or greater

1 chance of flooding in any given year as designated by the director
2 or administrator of the Federal Emergency Management Agency; and
3 (2) "facility" means all contiguous land and structures, other
4 appurtenances (including drainage structures, groundwater
5 monitoring wells, landfill gas probes, gate or scale houses), and
6 improvements on land used for the storage, processing, management,
7 or disposal of solid waste.

8 (b) Except as provided by Subsections ~~(b c)~~ and ~~(e d)~~, the
9 commission by rule shall prohibit the issuance of a permit for a new
10 hazardous waste landfill or an areal expansion of such a landfill if
11 the landfill is to be located in a special flood hazard area [~~the~~
12 ~~100-year floodplain~~ existing before site development, ~~unless the~~
13 ~~landfill is to be located in an area with a flood depth of less than~~
14 ~~three feet~~].

15 ~~(b-c)~~ The commission by rule may allow an areal expansion of
16 a landfill facility in a special flood hazard area [~~100-year~~
17 ~~floodplain~~] but only if the applicant or permit holder
18 demonstrates, and the commission is satisfied and finds [~~if it can~~
19 ~~be demonstrated to the satisfaction of the commission~~] that (1) no
20 other suitable site for the facility outside of the special flood
21 hazard area exists in the county in which the facility is or would
22 be located; (2) removing the proposed site for the facility from the
23 special flood hazard area would be prohibitively expensive;
24 and(3)the facility design will prevent the physical transport of
25 any hazardous waste by a 100-year flood event.

26 ~~(e d)~~ The commission by rule shall prohibit the issuance of a
27 permit for a new commercial hazardous waste land disposal unit if

1 the unit is to be located in a special flood hazard area [~~100-year~~
2 ~~floodplain~~], but only if the applicant or permit holder
3 demonstrates, and the commission is satisfied and finds [~~unless the~~
4 ~~applicant can demonstrate to the satisfaction of the commission~~]
5 that (1) no other suitable site for the unit outside of a special
6 flood hazard area exists in the county in which the unit is or would
7 be located; (2) removing the proposed site for the unit from a
8 special flood hazard area would be prohibitively expensive;
9 and(3)the facility design will prevent the physical transport of
10 any hazardous waste by a 100-year flood event.

11 (d) The commission by rule shall require an applicant to
12 provide sufficient information to assure that a proposed hazardous
13 waste landfill, areal expansion of such landfill, or new commercial
14 hazardous waste land disposal unit is not subject to inundation of a
15 100-year flood event. An applicant or any other party may not rely
16 solely on floodplain maps prepared by the Federal Emergency
17 Management Agency or a successor agency to determine whether a
18 hazardous waste landfill, areal expansion of such landfill, or
19 commercial hazardous waste land disposal unit is subject to such an
20 inundation.

21 SECTION 3. Section 361.1232, Health and Safety Code, as
22 added by this Act, and Section 361.098, Health and Safety Code, as
23 amended by this Act, apply only to an application for the issuance
24 or amendment of a permit for a solid waste landfill facility or
25 hazardous waste land disposal unit that is pending before the Texas
26 Commission on Environmental Quality on or after the effective date
27 of this Act. A permit for a solid waste landfill facility or

1 hazardous waste land disposal unit that is issued or amended before
2 the effective date of this Act is governed by the law in effect when
3 the permit was issued or amended, and the former law is continued in
4 effect for that purpose.

5 SECTION 4. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2017.