

By: Reynolds

H.B. No. 4078

A BILL TO BE ENTITLED

AN ACT

relating to applications for permits issued by the Texas Commission on Environmental Quality for certain new or expanded facilities in certain low-income and minority communities.

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

SECTION 1. Subtitle G, Title 5, Health and Safety Code, is amended by adding Chapter 428 to read as follows:

CHAPTER 428. ENVIRONMENTAL JUSTICE COMMUNITIES

Sec. 428.001. DEFINITIONS. In this chapter:

(1) "Affecting facility" means a facility required to obtain a permit, as "permit" is defined by Section 5.752, Water Code, under:

(A) Chapter 361 of this code;

(B) Chapter 382 of this code; or

(C) Chapter 26 or 27, Water Code.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Environmental justice community" means a United States census block group, as determined in accordance with the most recent United States census, for which:

(A) 30 percent or more of the noninstitutionalized population consists of persons who have an income below 200 percent of the federal poverty level; or

(B) 50 percent or more of the population consists

1 of members of racial minority or ethnic minority groups.

2 Sec. 428.002. ENVIRONMENTAL JUSTICE REPORT. (a) A person
3 applying for a permit for a new affecting facility or the expansion
4 of an affecting facility must submit to the commission an
5 environmental justice report stating whether the facility or
6 expansion is to be located in an environmental justice community.
7 The report must include demographic information to support the
8 applicant's conclusion as to whether the facility or expansion is
9 to be located in an environmental justice community.

10 (b) The commission shall review the environmental justice
11 report and conduct research to determine whether the affecting
12 facility or expansion is to be located in an environmental justice
13 community. The commission shall publish its determination and
14 findings in writing.

15 Sec. 428.003. REQUIREMENTS FOR FACILITIES IN ENVIRONMENTAL
16 JUSTICE COMMUNITIES. If the commission determines that the
17 affecting facility or expansion is to be located in an
18 environmental justice community, the applicant must, before the
19 commission may issue a permit:

20 (1) file with the commission a public participation
21 plan that meets the requirements of Section 428.004 and obtain the
22 commission's approval of the plan;

23 (2) consult with the chief elected official of the
24 municipality in which the facility or expansion is to be located, or
25 with the chief elected official of the county if the facility or
26 expansion is to be located outside the boundaries of a
27 municipality, to evaluate the need for a community environmental

1 benefit agreement in accordance with Section 428.006; and

2 (3) participate in a public hearing under Section
3 428.005.

4 Sec. 428.004. PUBLIC PARTICIPATION PLAN. A public
5 participation plan must:

6 (1) contain measures to facilitate effective public
7 participation in the regulatory process, including measures that:

8 (A) allow residents of the environmental justice
9 community to have an appropriate opportunity to participate in
10 decisions about a proposed affecting facility or expansion that may
11 adversely affect residents' environment or health; and

12 (B) seek out and facilitate the participation of
13 those who potentially would be affected by the facility or
14 expansion; and

15 (2) include a certification that the applicant will
16 undertake the measures contained in the plan.

17 Sec. 428.005. PUBLIC HEARING; NOTICE. (a) If the commission
18 determines that an affecting facility or expansion is to be located
19 in an environmental justice community, the commission shall conduct
20 a hearing to address issues of environmental justice posed by the
21 construction or expansion of the facility.

22 (b) Not more than 30 or less than 10 days before the date set
23 for the public hearing, the applicant shall:

24 (1) publish the date, time, location, and nature of
25 the hearing:

26 (A) in a newspaper having general circulation in
27 the area affected and any other appropriate local newspaper serving

1 the area;

2 (B) on the applicant's website, if applicable;

3 and

4 (C) on a reasonably visible sign posted at the
5 location of the proposed affecting facility or expansion, printed
6 in English and in each language spoken by at least 20 percent of the
7 population that resides within one-half mile of the proposed or
8 existing facility; and

9 (2) provide written notice of the date, time,
10 location, and nature of the meeting to:

11 (A) neighborhood and environmental groups in a
12 language appropriate for the target audience; and

13 (B) local and state elected officials who
14 represent the community.

15 (c) At the hearing, the person applying for the permit shall
16 make a reasonable and good faith effort to provide clear, accurate,
17 and complete information about the proposed affecting facility or
18 expansion and the potential environmental and health impacts of the
19 facility or expansion on the community.

20 (d) The commission may not take any action on the person's
21 application for a permit before the 60th day after the date of the
22 hearing.

23 Sec. 428.006. COMMUNITY ENVIRONMENTAL BENEFIT AGREEMENTS.

24 (a) A municipality and the owner or developer of an affecting
25 facility may enter into a community environmental benefit agreement
26 under which the owner or developer agrees to mitigate adverse
27 impacts reasonably related to the facility, including impacts on

1 the environment, traffic, parking, and noise, by:

2 (1) developing real property that is to be used for the
3 facility or expansion in a way that mitigates the impacts; or

4 (2) providing financial resources for mitigation.

5 (b) If an affecting facility will be located outside the
6 boundaries of a municipality, a community environmental benefit
7 agreement may be entered into between a county and the owner or
8 developer of the affecting facility.

9 (c) Mitigation may include on-site and off-site
10 improvements, activities, and programs, including funding for
11 activities such as:

12 (1) providing environmental education;

13 (2) reducing diesel pollution;

14 (3) constructing bicycle and pedestrian trails;

15 (4) staffing parks;

16 (5) supporting and promoting urban forestry;

17 (6) supporting and promoting community gardens; and

18 (7) providing for any other negotiated benefit to the
19 environment in the environmental justice community.

20 (d) Before negotiating the terms of a community
21 environmental benefit agreement, the municipality or county shall
22 provide a reasonable and public opportunity for residents of the
23 potentially affected environmental justice community to be heard
24 concerning the need for, and terms of, an agreement.

25 SECTION 2. Chapter 428, Health and Safety Code, as added by
26 this Act, applies only to an application to construct or expand an
27 affecting facility in an environmental justice community as those

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1 terms are defined by Section 428.001, Health and Safety Code, as
2 added by this Act, that is received by the Texas Commission on
3 Environmental Quality on or after the effective date of this Act.

4 SECTION 3. This Act takes effect September 1, 2019.