

By: Hughes

S.B. No. 1088

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for acting on an application for a permit for a surface coal mining and reclamation operation.

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

SECTION 1. Subchapter C, Chapter 2003, Government Code, is amended by adding Section 2003.0465 to read as follows:

Sec. 2003.0465. HEARINGS FOR RAILROAD COMMISSION. (a) In this section:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Division" means the Surface Mining and Reclamation Division of the commission.

(b) This section applies only to a hearing conducted on behalf of the commission under Section 134.062, Natural Resources Code.

(c) Each issue considered in a hearing referred by the commission must have been raised in a timely manner by an affected person in a comment submitted by that affected person in response to a permit application.

(d) In a contested case hearing, the filing with the hearing examiner of the final technical assessment of the application, the application, the recommendation for the issuance of the permit by the division, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima

1 facie demonstration that:

2 (1) the application meets all state and federal legal
3 and technical requirements; and

4 (2) a permit, if issued consistent with the
5 application and the final technical assessment of the division,
6 would be eligible for the required findings under Section 134.066,
7 Natural Resources Code.

8 (e) A party may rebut a demonstration under Subsection (d)
9 by presenting evidence that:

10 (1) relates to an issue for which a hearing is
11 conducted by the commission under Section 134.062, Natural
12 Resources Code; and

13 (2) demonstrates that one or more provisions proposed
14 in the application violate a specifically applicable state or
15 federal requirement.

16 (f) A party rebutting under Subsection (e) a demonstration
17 made under Subsection (d) bears the burden of persuasion.

18 (g) If in accordance with Subsections (e) and (f) a party
19 rebutts a demonstration made under Subsection (d), the applicant or
20 the division may present additional evidence in rebuttal to support
21 the application.

22 SECTION 2. Section 134.062, Natural Resources Code, is
23 amended by adding Subsections (c) and (d) to read as follows:

24 (c) For the purpose of a contested case hearing held by or
25 for the commission, "affected person," "person affected," or
26 "person who may be affected" means a person who has a personal
27 justiciable interest related to a legal right, duty, privilege,

1 power, or economic interest affected by the contested case hearing.
2 An interest common to members of the public does not qualify as a
3 personal justiciable interest.

4 (d) In determining whether a person has a personal
5 justiciable interest or whether an affected association is entitled
6 to standing in a contested case hearing within the commission's
7 jurisdiction, the commission:

8 (1) may consider:

9 (A) the merits of the underlying application,
10 including whether the application meets the requirements for permit
11 issuance;

12 (B) the likely effect of regulated activity on
13 the health and safety of the hearing requestor, and the use of the
14 hearing requestor's property;

15 (C) the administrative record, including the
16 permit application and any supporting documentation;

17 (D) the analysis and opinions of the Surface
18 Mining and Reclamation Division of the commission;

19 (E) whether the interest claimed is protected by
20 the law governing the permit that is the subject of the application;

21 (F) whether a reasonable relationship exists
22 between the interest claimed and the regulated activity;

23 (G) the likely effect of the regulated activity
24 on the use of the affected natural resource by the person;

25 (H) for a governmental entity, the entity's
26 statutory authority over issues relevant to the application; and

27 (I) any other expert reports, affidavits,

1 opinions, or information submitted on or before any applicable
2 deadline to the commission by the executive director, the
3 applicant, or a hearing requestor; and

4 (2) may not find that:

5 (A) a group or association is an affected person
6 unless the group or association identifies, by name and physical
7 address in a timely request for a contested case hearing, a member
8 of the group or association who would be an affected person in the
9 person's own right; or

10 (B) a hearing requestor is an affected person
11 unless the hearing requestor timely submitted comments on the
12 permit application.

13 SECTION 3. (a) The changes in law made by this Act apply
14 only to:

15 (1) a permit application that is filed with the
16 Railroad Commission of Texas on or after the effective date of this
17 Act; or

18 (2) a judicial proceeding initiated on or after the
19 effective date of this Act that challenges an act or decision of the
20 Railroad Commission of Texas made during a permit proceeding.

21 (b) A permit application filed or a judicial proceeding
22 initiated before the effective date of this Act is governed by the
23 law in effect when the permit application was filed or the judicial
24 proceeding was initiated, and the former law is continued in effect
25 for that purpose.

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