

By: Fraser

S.B. No. 957

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for action by the Texas Commission on Environmental Quality on applications for certain environmental permits and administrative and judicial review of the commission's action.

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

SECTION 1. Chapter 2001, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADMINISTRATIVE REVIEW OF CERTAIN ENVIRONMENTAL PERMITS

Sec. 2001.301. PURPOSE. It is the public policy of this state and the purpose of this subchapter to continue leading the country in maintaining protection of public health and the environment while providing stability and certainty for the state's economy.

Sec. 2001.302. DEFINITIONS. In this subchapter:

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

(2) "Interested person" means a person who resides or operates in this state, and includes an applicant for a permit, permit amendment, or permit renewal.

(3) "Office" means the State Office of Administrative Hearings.

(4) "Permit" includes a permit, license, certificate,

1 registration, approval, or other form of authorization issued by
2 the commission.

3 Sec. 2001.303. APPLICABILITY. (a) This subchapter applies
4 to a final commission decision issued under Section 5.5553, Water
5 Code, following a public hearing under Section 5.5541, Water Code,
6 for:

7 (1) a national pollutant discharge elimination system
8 permit under Chapter 26, Water Code;

9 (2) a Class I injection well permit under Chapter 27,
10 Water Code;

11 (3) an in situ uranium mining permit under Chapter 27,
12 Water Code;

13 (4) a permit under Chapter 28, Water Code;

14 (5) a solid waste facility permit under Chapter 361,
15 Health and Safety Code;

16 (6) a hazardous waste management facility permit under
17 Chapter 361, Health and Safety Code;

18 (7) a preconstruction permit under Chapter 382, Health
19 and Safety Code;

20 (8) a standard permit for a concrete batch plant under
21 Chapter 382, Health and Safety Code; and

22 (9) a license under Chapter 401, Health and Safety
23 Code.

24 (b) This subchapter does not apply to a permit for which a
25 hearing under Section 5.5541(d), Water Code, is not held.

26 Sec. 2001.304. REVIEW OF FINAL PERMIT DECISIONS. (a) Not
27 later than the 30th day after the date notice of the commission's

1 final decision on a permit application under Section 5.5553, Water
2 Code, is published in the Texas Register, an interested person who
3 filed a comment on the permit application or participated in a
4 public hearing on the permit application may file a petition for
5 administrative review of the permit decision by the office.

6 (b) A person who failed to file a comment or participate in
7 the public hearing on the permit application may petition for
8 administrative review of the permit decision only with regard to
9 any changes made to the draft permit in the permit decision.

10 (c) The petition must be filed with the chief clerk of the
11 commission. Not later than the fifth calendar day after the date
12 the commission receives the petition, the chief clerk shall forward
13 the petition to the office for review. The chief clerk shall
14 include with the petition:

15 (1) if the permit was issued, the final permit and the
16 administrative record for the final permit, including:

17 (A) the findings of fact and conclusions of law
18 that support the issuance of the permit;

19 (B) the draft permit and the findings of fact and
20 conclusions of law that support the draft permit; and

21 (C) the executive director's preliminary
22 decision on the permit application;

23 (2) all comments received during the public comment
24 period other than comments received in a public meeting held under
25 Section 5.554, Water Code;

26 (3) the tape or transcript of any public hearing held
27 under Section 5.5541, Water Code;

1 (4) the response to the comments required by Section
2 5.555, Water Code; and

3 (5) any other documents contained in the supporting
4 materials for the permit.

5 (d) The petition must include a statement of the reasons
6 supporting review by the office, including a demonstration that any
7 issues raised in the petition:

8 (1) were raised during the public comment period or at
9 a public hearing; or

10 (2) relate to changes made to the draft permit in the
11 permit decision.

12 (e) The office may grant the petition only if the petitioner
13 demonstrates that the basis for the review is:

14 (1) a finding of fact or conclusion of law that is
15 clearly erroneous; or

16 (2) an exercise of discretion or an important policy
17 consideration that the office should, in its discretion, review.

18 (f) The commission and permit applicant, if applicable, may
19 each file a response to the petition not later than the 30th day
20 after the date the petition is filed.

21 (g) The petitioner may file a reply brief not later than the
22 15th day after the date of the service of a response described by
23 Subsection (f).

24 (h) The office may, in its discretion, deny the petition,
25 even if the petition satisfies the requirements of Subsection (e).

26 (i) The scope of review on a petition is limited to the
27 administrative record provided to the office by the chief clerk of

1 the commission. New evidence may not be raised or considered by the
2 office in reviewing the petition.

3 (j) Not later than the 60th day after the date the office
4 receives the petition, it shall issue an order granting or denying
5 the petition. An issue raised in a denied petition is eligible for
6 judicial review of the issue in the Court of Appeals for the Third
7 Court of Appeals District.

8 Sec. 2001.305. ADMINISTRATIVE REVIEW. (a) If the office
9 grants a petition for review under Section 2001.304, the office
10 shall give public notice of the review not later than the 10th day
11 before the date set for the review that includes:

12 (1) a statement of the time, place, and nature of the
13 review;

14 (2) a statement of the legal authority and
15 jurisdiction under which the review is to be held;

16 (3) a reference to the specific sections of the
17 statutes and rules involved in the matter under review;

18 (4) a short, plain statement of the matters asserted;
19 and

20 (5) at the discretion of the office, a briefing
21 schedule for the review that may allow the submission of briefs by a
22 petitioner, the permit applicant, the commission, and the office of
23 public interest counsel of the commission.

24 (b) If the office determines that the briefing provided with
25 the petition for review is sufficient to make a final decision, it
26 may conclude that additional briefing is not necessary.

27 (c) The office may allow for the filing of amicus briefs. If

1 applicable, the notice required under Subsection (a) must include
2 instructions for any interested person to file an amicus brief.

3 (d) The office may, in addition to establishing a briefing
4 schedule, direct the parties to present oral argument on a
5 specified issue.

6 (e) The scope of review by the office shall be limited to
7 review of the administrative record, briefs provided by the
8 parties, and any oral arguments presented to the office.

9 (f) The office shall issue a decision not later than the
10 60th day after the date it grants the petition.

11 (g) The office is limited to the following actions with
12 regard to a final decision issued by the commission:

13 (1) affirm the commission's final decision; or

14 (2) remand the final decision to the commission with
15 recommendations to address:

16 (A) clearly erroneous findings of fact or
17 conclusions of law identified by the office;

18 (B) an exercise of discretion; or

19 (C) an important policy consideration.

20 (h) If the office affirms the commission's final decision,
21 that final decision is eligible for judicial review in the Court of
22 Appeals for the Third Court of Appeals District.

23 Sec. 2001.306. ISSUES REMANDED TO THE COMMISSION. (a) Not
24 later than the 30th day after the date the office remands a decision
25 to the commission, the commission shall:

26 (1) modify the decision accordingly; or

27 (2) decline to modify the decision.

1 (b) An action taken by the commission under Subsection (a)
2 must:

- 3 (1) be published in the Texas Register; and
4 (2) include an explanation describing the commission's
5 reasoning for the action.

6 (c) The commission's action on a decision remanded to the
7 commission by the office is eligible for judicial review in the
8 Court of Appeals for the Third Court of Appeals District.

9 SECTION 2. The heading to Subchapter G, Chapter 2001,
10 Government Code, is amended to read as follows:

11 SUBCHAPTER G. [~~CONTESTED CASES.~~] JUDICIAL REVIEW

12 SECTION 3. Section 2001.171, Government Code, is amended to
13 read as follows:

14 Sec. 2001.171. JUDICIAL REVIEW. (a) A person who has
15 exhausted all administrative remedies available within a state
16 agency and who is aggrieved by a final decision in a contested case
17 or in an administrative review under Subchapter J of an
18 environmental permit decision is entitled to judicial review under
19 this chapter.

20 (b) Except as provided by Section 2001.227, this subchapter
21 applies to an administrative review under Subchapter J of an
22 environmental permit in the same manner as it applies to a contested
23 case.

24 SECTION 4. Subchapter I, Chapter 2001, Government Code, is
25 amended by adding Section 2001.227 to read as follows:

26 Sec. 2001.227. VENUE AND STANDARD OF REVIEW FOR CERTAIN
27 ENVIRONMENTAL CASES. (a) The venue for judicial review of an

1 action or decision identified under Subchapter J as eligible for
2 judicial review is in the Court of Appeals for the Third Court of
3 Appeals District.

4 (b) The standard of review of an action or decision under
5 Subchapter J is whether the action or decision was:

- 6 (1) arbitrary and capricious; or
7 (2) characterized by abuse or a clearly unwarranted
8 exercise of discretion.

9 (c) Under the arbitrary and capricious standard of review, a
10 court may not substitute its judgment for the judgment of the Texas
11 Commission on Environmental Quality but:

- 12 (1) may affirm the decision in whole or in part; or
13 (2) shall reverse and remand the case for further
14 proceedings if substantial rights of the permit applicant have been
15 prejudiced because the findings, inferences, conclusions, or
16 decisions of the Texas Commission on Environmental Quality are:

17 (A) in violation of a constitutional or statutory
18 provision;

19 (B) in excess of the agency's statutory
20 authority;

21 (C) made through unlawful approval;

22 (D) affected by other error of law;

23 (E) arbitrary or capricious; or

24 (F) characterized by abuse or clearly
25 unwarranted exercise of discretion.

26 SECTION 5. Section 2003.024(d), Government Code, is amended
27 to read as follows:

1 (d) This section does not apply to hearings conducted:

2 (1) by the environmental quality [~~natural resource~~
3 ~~conservation~~] division or the utility division; or

4 (2) under the administrative license revocation
5 program.

6 SECTION 6. The heading to Section 2003.047, Government
7 Code, is amended to read as follows:

8 Sec. 2003.047. ENVIRONMENTAL QUALITY [~~NATURAL RESOURCE~~
9 ~~CONSERVATION~~] DIVISION.

10 SECTION 7. Section 2003.047, Government Code, is amended by
11 amending Subsections (a), (b), and (m) and adding Subsection (p) to
12 read as follows:

13 (a) The office shall establish an environmental quality [~~a~~
14 ~~natural resource conservation~~] division to perform the contested
15 case hearings and administrative review of certain permit decisions
16 for the Texas Commission on Environmental Quality [~~Natural Resource~~
17 ~~Conservation Commission~~].

18 (b) The division shall conduct hearings relating to
19 contested cases before the commission, other than a hearing
20 conducted by one or more commissioners, and shall conduct
21 administrative review of commission permit application decisions
22 to which Subchapter J, Chapter 2001, applies. The commission by
23 rule may delegate to the division the responsibility to hear any
24 other matter before the commission if consistent with the
25 responsibilities of the division.

26 (m) The [~~Except as provided in Section 361.0832, Health and~~
27 ~~Safety Code, the~~] commission shall consider the proposal for

1 decision prepared by the administrative law judge, the exceptions
2 of the parties, and the briefs and argument of the parties. The
3 commission may amend the proposal for decision, including any
4 finding of fact, but any such amendment thereto and order shall be
5 based solely on the record made before the administrative law
6 judge. Any such amendment by the commission shall be accompanied by
7 an explanation of the basis of the amendment. The commission may
8 also refer the matter back to the administrative law judge to
9 reconsider any findings and conclusions set forth in the proposal
10 for decision or take additional evidence or to make additional
11 findings of fact or conclusions of law. The commission shall serve
12 a copy of the commission's order, including its finding of facts and
13 conclusions of law, on each party.

14 (p) The chief administrative law judge shall adopt rules
15 that govern the procedure to be used by the environmental quality
16 division for the administrative review of a commission decision on
17 an environmental permit to which Subchapter J, Chapter 2001,
18 applies.

19 SECTION 8. Section 2003.048, Government Code, is amended to
20 read as follows:

21 Sec. 2003.048. TEXAS [~~NATURAL RESOURCE CONSERVATION~~]
22 COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. The office shall
23 charge the Texas [~~Natural Resource Conservation~~] Commission on
24 Environmental Quality a fixed annual fee rather than an hourly rate
25 for services rendered by the office to the commission. The amount
26 of the fee may not be less than the amount appropriated to the Texas
27 [~~Natural Resource Conservation~~] Commission on Environmental

1 Quality in the General Appropriations Act for payment to the
2 environmental quality [~~natural resource conservation~~] division to
3 conduct commission hearings. The amount of the fee shall be based
4 on the costs of conducting the hearings, the costs of travel
5 expenses and telephone charges directly related to the hearings,
6 docketing costs, and other applicable administrative costs of the
7 office including the administrative costs of the environmental
8 quality [~~natural resource conservation~~] division. The office and
9 the Texas [~~Natural Resource Conservation~~] Commission on
10 Environmental Quality shall negotiate the amount of the fixed fee
11 biennially, subject to the approval of the governor, to coincide
12 with the commission's legislative appropriations request.

13 SECTION 9. Section 5.311(a), Water Code, is amended to read
14 as follows:

15 (a) The commission may delegate to an administrative law
16 judge of the State Office of Administrative Hearings the
17 responsibility to:

18 (1) hear any matter before the commission other than a
19 matter that is the subject of a public hearing under Section 5.5541;
20 and

21 (2) [~~to~~] issue interlocutory orders related to interim
22 rates under Chapter 13.

23 SECTION 10. Section 5.313, Water Code, is amended to read as
24 follows:

25 Sec. 5.313. HEARING EXAMINERS REFERENCED IN LAW. Any
26 reference in law to a hearing examiner who has a duty related to a
27 case pending before the commission, other than a case involving a

1 matter that is the subject of a public hearing under Section 5.5541,
2 means an administrative law judge of the State Office of
3 Administrative Hearings.

4 SECTION 11. Subchapter H, Chapter 5, Water Code, is amended
5 by adding Section 5.316 to read as follows:

6 Sec. 5.316. APPLICABILITY OF CONTESTED CASE PROCEDURE TO
7 CERTAIN HEARINGS. Subchapters C, D, E, and F, Chapter 2001,
8 Government Code, do not apply to an application for an original
9 permit, permit amendment, or permit renewal to which Subchapter J,
10 Chapter 2001, Government Code, applies.

11 SECTION 12. Subchapter I, Chapter 5, Water Code, is amended
12 by adding Section 5.358 to read as follows:

13 Sec. 5.358. JUDICIAL REVIEW OF PERMITS SUBJECT TO
14 ADMINISTRATIVE REVIEW. Except as provided by Section 2001.227,
15 Government Code, Subchapter G, Chapter 2001, Government Code,
16 applies to the judicial review of a permit action or decision under
17 Subchapter J, Chapter 2001, Government Code, instead of this
18 subchapter.

19 SECTION 13. Sections 5.402(a) and (b), Water Code, are
20 amended to read as follows:

21 (a) At any time before the public notice of the opportunity
22 to request a public hearing on a permit application, the applicant
23 may request that consolidated applications be processed separately
24 as determined by the executive director. The executive director
25 shall process the applications separately if the applicant submits
26 a timely request under this subsection.

27 (b) At any time after the notice of opportunity to request a

1 public hearing [~~but before referral of the matter to the State~~
2 ~~Office of Administrative Hearings~~], the executive director may
3 separate the applications for processing on a showing of good cause
4 by the applicant that the applications should be processed
5 separately. For purposes of this subsection, "good cause" includes
6 a change in the statutory or regulatory requirements governing a
7 permit or a substantial change in the factual circumstances
8 surrounding the applications for permits.

9 SECTION 14. Sections 5.551(a) and (b), Water Code, are
10 amended to read as follows:

11 (a) This subchapter establishes procedures for providing
12 public notice, an opportunity for public comment, and an
13 opportunity for public hearing [~~under Subchapters C-H, Chapter~~
14 ~~2001, Government Code,~~] regarding commission actions relating to a
15 permit issued under Chapter 26, ~~[or]~~ 27, or 28 of this code or
16 Chapter 361, 382, or 401, Health and Safety Code. This subchapter
17 is procedural and does not expand or restrict the types of
18 commission actions for which public notice, an opportunity for
19 public comment, and an opportunity for public hearing are provided
20 under Chapter 26, ~~[or]~~ 27, or 28 of this code or Chapter 361, 382, or
21 401, Health and Safety Code.

22 (b) The commission by rule shall provide for additional
23 notice, opportunity for public comment, or opportunity for public
24 hearing to the extent necessary to satisfy a requirement for United
25 States Environmental Protection Agency authorization of a state
26 permit program.

27 SECTION 15. Subchapter M, Chapter 5, Water Code, is amended

1 by adding Section 5.5515 to read as follows:

2 Sec. 5.5515. DEFINITIONS. In this subchapter:

3 (1) "Interested person" means a person who resides or
4 operates in this state, and includes an applicant for a permit,
5 permit amendment, or permit renewal.

6 (2) "Permit" includes a permit, license, certificate,
7 registration, approval, or other form of authorization issued by
8 the commission.

9 SECTION 16. Sections 5.552(a) and (d), Water Code, are
10 amended to read as follows:

11 (a) Not later than the 30th day after the date the
12 commission receives the application, the [The] executive director
13 shall determine whether [when] an application is administratively
14 complete.

15 (d) In addition to providing notice under Subsection
16 (b)(1), the applicant shall comply with any applicable public
17 notice requirements under Chapters 26, ~~[and]~~ 27, and 28 of this
18 code, Chapters [Chapter] 361, 382, and 401, Health and Safety Code,
19 and rules adopted under those chapters.

20 SECTION 17. Section 5.553, Water Code, is amended by
21 amending Subsections (c) and (d) and adding Subsections (f) and (g)
22 to read as follows:

23 (c) The commission by rule shall establish the form and
24 content of the notice, the manner of publication, and the duration
25 of the public comment period. The notice must include:

26 (1) the information required by Sections
27 5.552(c)(1)-(5);

- 1 (2) a summary of the preliminary decision;
- 2 (3) the location at which a copy of the preliminary
3 decision is available for review and copying as provided by
4 Subsection (e);
- 5 (4) a description of the manner in which comments
6 regarding the preliminary decision may be submitted; ~~and~~
- 7 (5) if applicable, a description of the procedure for
8 requesting a public hearing on the preliminary decision; and
- 9 (6) any other information the commission by rule
10 requires.

11 (d) In addition to providing notice under this section, the
12 applicant shall comply with any applicable public notice
13 requirements under Chapters 26, ~~and~~ 27, and 28 of this code,
14 Chapters [Chapter] 361, 382, and 401, Health and Safety Code, and
15 rules adopted under those chapters.

16 (f) The duration of the public comment period shall extend
17 to the later of:

- 18 (1) the close of a public hearing on the matter, if
19 applicable; or
- 20 (2) the 45th day after the date the public comment
21 period begins.

22 (g) If the executive director determines that there is
23 substantial public interest in extending the public comment period,
24 the executive director may extend the public comment period
25 described by Subsection (f) for a period not to exceed 30 days.

26 SECTION 18. Section 5.554, Water Code, is amended to read as
27 follows:

1 Sec. 5.554. PUBLIC MEETING. (a) In this section, "public
2 meeting" means an informal meeting open to any interested person at
3 which the permit applicant, the executive director, and members of
4 the public may discuss issues related to the permit application.

5 (b) During the public comment period, the executive
6 director or the applicant, in cooperation with the executive
7 director, may hold one or more public meetings in the county in
8 which the facility is located or proposed to be located or in an
9 adjacent county.

10 (c) The executive director shall hold a public meeting:

11 (1) on the request of a member of the legislature who
12 represents the general area in which the facility is located or
13 proposed to be located; or

14 (2) if the executive director determines that there is
15 substantial public interest in the proposed activity.

16 SECTION 19. Subchapter M, Chapter 5, Water Code, is amended
17 by adding Sections 5.5541 and 5.5542 to read as follows:

18 Sec. 5.5541. PUBLIC HEARING. (a) In this section, "public
19 hearing" means a formal meeting at which any interested person may
20 make comments on the record relating to a proposed agency decision
21 on a permit application.

22 (b) An interested person may request a public hearing after
23 a preliminary decision has been issued on an application for a
24 permit, permit renewal, or permit amendment for:

25 (1) a national pollutant discharge elimination system
26 permit under Chapter 26;

27 (2) a Class I injection well permit under Chapter 27;

1 (3) an in situ uranium mining permit under Chapter 27;

2 (4) a permit under Chapter 28;

3 (5) a solid waste facility permit under Chapter 361,
4 Health and Safety Code;

5 (6) a hazardous waste management facility permit under
6 Chapter 361, Health and Safety Code;

7 (7) a preconstruction permit under Chapter 382, Health
8 and Safety Code;

9 (8) a standard permit for a concrete batch plant under
10 Chapter 382, Health and Safety Code; or

11 (9) a license under Chapter 401, Health and Safety
12 Code.

13 (c) The executive director shall hold a public hearing not
14 later than the 35th day after the date the request is made under
15 Subsection (b).

16 (d) The following permits are not eligible for a public
17 hearing:

18 (1) a general permit under Chapter 26;

19 (2) any of the following permits under Chapter 382,
20 Health and Safety Code:

21 (A) a standard permit, other than a standard
22 permit for a concrete batch plant; or

23 (B) a permit by rule;

24 (3) any of the following permits under Chapter 26, 27,
25 or 28 of this code or Chapter 361, 382, or 401, Health and Safety
26 Code:

27 (A) an administrative permit or a minor permit,

1 minor permit amendment, or minor permit modification, as those
2 terms are defined by commission rule; or

3 (B) a registration; and

4 (4) any permit determined by commission rule to be
5 ineligible for a hearing.

6 (e) A public hearing must be held in the county in which the
7 facility is located or proposed to be located or in an adjacent
8 county.

9 (f) For a permit application not listed in Subsection (b) or
10 (d), a public hearing may be held if the executive director
11 determines that there is a substantial public interest in the
12 proposed activity.

13 (g) Notice of a public hearing must be given not later than
14 the 30th day before the date of the hearing and in the same form and
15 manner as is required for notice of a preliminary decision under
16 Section 5.553(c).

17 (h) The executive director is responsible for the
18 scheduling and orderly conduct of a public hearing.

19 (i) The commission by rule shall establish the procedures
20 for requesting and conducting a public hearing, including
21 reasonable time limits for oral statements and provisions for
22 asking and answering questions.

23 (j) At a public hearing, any person may submit oral or
24 written comments and data concerning the preliminary decision.

25 Sec. 5.5542. OBLIGATION TO RAISE ISSUES AND PROVIDE
26 INFORMATION DURING PUBLIC COMMENT PERIOD. (a) An interested person
27 must raise all reasonably ascertainable issues and submit all

1 reasonably available arguments supporting the person's position on
2 the executive director's preliminary decision before the close of
3 the public comment period.

4 (b) Supporting materials submitted during the public
5 comment period must be included in full in the administrative
6 record for the application and may not be incorporated by reference
7 unless the materials:

8 (1) are already part of the administrative record in
9 the same proceeding; or

10 (2) consist of:

11 (A) state or federal statutes or rules; or

12 (B) generally available reference materials.

13 (c) The commission by rule shall establish procedures to
14 make supporting materials not already included in the
15 administrative record available to the executive director.

16 SECTION 20. Section 5.555, Water Code, is amended to read as
17 follows:

18 Sec. 5.555. RESPONSE TO PUBLIC COMMENTS. (a) The executive
19 director, in accordance with procedures provided by commission
20 rule, shall file with the chief clerk of the commission a response
21 to each relevant and material public comment on the preliminary
22 decision filed during the public comment period, including an oral
23 or written comment delivered at a public hearing, but not including
24 an oral or written comment raised solely at a public meeting. The
25 executive director is required to respond to only those comments
26 that substantially relate to the permit application.

27 (b) Not later than the 60th day after the date the public

1 comment period ends, the ~~[The]~~ chief clerk of the commission shall
2 transmit the executive director's decision, the executive
3 director's response to public comments, a draft permit under
4 Section 5.5551, if applicable, and instructions for filing a
5 petition for an administrative review of a final commission
6 decision ~~[requesting that the commission reconsider the executive~~
7 ~~director's decision or hold a contested case hearing]~~ to:

8 (1) the applicant;

9 (2) any person who submitted comments during the
10 public comment period; and

11 (3) any person who requested to be on the mailing list
12 for the permit action.

13 (c) If, after the close of the public comment period, the
14 executive director determines that additional time is necessary to
15 respond to public comments, the time limit described by Subsection
16 (b) may be extended for a period not to exceed 30 days.

17 SECTION 21. Subchapter M, Chapter 5, Water Code, is amended
18 by adding Sections 5.5551, 5.5552, and 5.5553 to read as follows:

19 Sec. 5.5551. DRAFT PERMIT. (a) If the executive director
20 approves a permit application, the executive director shall prepare
21 a draft permit that includes the findings of fact and conclusions of
22 law that support the issuance of the draft permit. The chief clerk
23 of the commission shall include the draft permit with the
24 information transmitted under Section 5.555(b).

25 (b) The commission by rule shall develop a procedure for an
26 interested person to file proposed findings of fact and conclusions
27 of law for consideration by the executive director for the purpose

1 of preparing the draft permit.

2 Sec. 5.5552. UNCONTESTED APPLICATIONS. If a public hearing
3 is not requested and comments are not filed on an application, that
4 application is considered uncontested and the executive director
5 may issue the final permit. A final permit issued under this
6 section is not subject to administrative or judicial review.

7 Sec. 5.5553. FINAL COMMISSION DECISION ON CERTAIN PERMIT
8 APPLICATIONS; PETITION FOR ADMINISTRATIVE REVIEW. (a) Not later
9 than the 30th day after the date the chief clerk transmits the
10 executive director's decision as described by Section 5.555(b), the
11 commission shall approve, disapprove, or approve with
12 modifications the executive director's decision and publish notice
13 of the decision in the Texas Register.

14 (b) If the commission approves the draft permit, the
15 commission shall issue a final permit that includes the findings of
16 fact and conclusions of law that support the issuance of the final
17 permit.

18 (c) A final permit issued by the commission is effective on
19 the date of approval by the commission. The permit applicant may
20 rely on the final permit to conduct the authorized activity.

21 (d) The commission's action under Subsection (a) is subject
22 to administrative review by the State Office of Administrative
23 Hearings under Subchapter J, Chapter 2001, Government Code.

24 (e) A petition for administrative review by the State Office
25 of Administrative Hearings is a prerequisite to seeking judicial
26 review of a final commission action on a permit application.

27 SECTION 22. Sections 27.018(a) and (b), Water Code, are

1 amended to read as follows:

2 (a) ~~[If it is considered necessary and in the public~~
3 ~~interest, the commission may hold a public hearing on the~~
4 ~~application.]~~ The commission on request shall hold a public
5 hearing on a permit application for a Class I ~~[an]~~ injection well
6 ~~[to dispose of industrial and municipal waste if a hearing is~~
7 ~~requested by a local government located in the county of the~~
8 ~~proposed disposal well site or by an affected person. In this~~
9 ~~subsection, "local government" has the meaning provided for that~~
10 ~~term by Chapter 26 of this code].~~

11 (b) The commission by rule shall provide for giving notice
12 of ~~[the opportunity to request]~~ a public hearing on a permit
13 application. The rules for notice shall include provisions for
14 giving notice to local governments and affected persons. The
15 commission shall define "affected person" by rule.

16 SECTION 23. Sections 27.0513(a) and (d), Water Code, are
17 amended to read as follows:

18 (a) The commission may issue a permit pursuant to Section
19 27.011 that authorizes the construction and operation of two or
20 more similar injection wells within a specified area for mining of
21 uranium. An application for a new permit issued pursuant to Section
22 27.011, a major amendment of such a permit, or a renewal of such a
23 permit for mining of uranium is subject to the public notice
24 requirements ~~[and opportunity for contested case hearing]~~ provided
25 under Section 27.018.

26 (d) Notwithstanding Sections 5.551, ~~[5.556]~~ 27.011, and
27 27.018, an application for an authorization submitted after

1 September 1, 2007, is an uncontested matter not subject to an
2 administrative review under Subchapter J, [a contested case hearing
3 or the hearing requirements of] Chapter 2001, Government Code,
4 unless the authorization seeks any of the following:

5 (1) an amendment to a restoration table value;

6 (2) the initial establishment of monitoring wells for
7 any area covered by the authorization, including the location,
8 number, depth, spacing, and design of the monitoring wells, unless
9 the executive director uses the recommendation of an independent
10 third-party expert chosen by the commission; or

11 (3) an amendment to the type or amount of bond required
12 for groundwater restoration or by Section 27.073 to assure that
13 there are sufficient funds available to the state for groundwater
14 restoration or the plugging of abandoned wells in the area by a
15 third-party contractor.

16 SECTION 24. Section 361.082(b), Health and Safety Code, is
17 amended to read as follows:

18 (b) The [~~On its own motion or the request of a person~~
19 ~~affected, the~~] commission on request shall [~~may~~] hold a public
20 hearing on an application for a hazardous waste permit in
21 accordance with this subchapter.

22 SECTION 25. Section 361.0831, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Unless
25 required for the disposition of ex parte matters authorized by law,
26 [~~or unless permitted by Section 2001.061, Government Code,~~] a
27 hearings examiner conducting a public hearing on a permit

1 application may not communicate, directly or indirectly, with any
2 employee of the commission, any commissioner, or any party to a
3 hearing conducted by the commission in connection with any issue of
4 fact or law pertaining to an administrative review [~~a contested~~
5 ~~case~~] in which the commission or party is involved.

6 (b) Except for communications allowed under Subsection (a),
7 an employee of the commission, a commissioner, or a party to a
8 hearing conducted by the commission may not attempt to influence
9 the finding of facts or the application of law or rules by a
10 hearings examiner conducting a public hearing except [~~by proper~~
11 ~~evidence, pleadings, and legal argument~~] with notice and
12 opportunity for all parties to participate.

13 (c) If a prohibited contact is made, the hearings examiner
14 conducting the public hearing shall notify all parties with a
15 summary of that contact and notice of their opportunity to respond
16 and shall give all parties an opportunity to respond.

17 SECTION 26. Sections 361.088(c) and (d), Health and Safety
18 Code, are amended to read as follows:

19 (c) Except as provided by Subsection (e), before a permit is
20 issued, amended, extended, or renewed, the commission on request
21 shall hold [~~provide an opportunity for~~] a public hearing [~~to the~~
22 ~~applicant and persons affected~~]. The commission may also hold a
23 hearing on its own motion.

24 (d) The [~~In addition to providing an opportunity for a~~
25 ~~hearing held under this section, the~~] commission shall hold a
26 public meeting as described by Section 5.554, Water Code, and give
27 notice as provided by Section 361.0791.

1 SECTION 27. Section 361.089(b), Health and Safety Code, is
2 amended to read as follows:

3 (b) Except as provided by Section 361.110, the commission
4 shall notify each governmental entity listed under Section 361.067
5 and provide an opportunity for a public hearing to the permit holder
6 or applicant and persons affected. The commission may also hold a
7 public hearing on its own motion.

8 SECTION 28. Section 361.121(c), Health and Safety Code, is
9 amended to read as follows:

10 (c) The notice and hearing provisions of Subchapter M,
11 Chapter 5, Water Code, [~~as added by Chapter 1350, Acts of the 76th~~
12 ~~Legislature, Regular Session, 1999,~~] apply to an application under
13 this section for a permit, a permit amendment, or a permit renewal.
14 In addition, at the time published notice of intent to obtain a
15 permit is required under Section 5.552, Water Code, an applicant
16 for a permit, permit amendment, or permit renewal under this
17 section must notify by registered or certified mail each owner of
18 land located within one-quarter mile of the proposed land
19 application unit who lives on that land of the intent to obtain the
20 permit, amendment, or renewal. Notice to landowners must include
21 the information required by Section 5.552(c), Water Code, and
22 information regarding the anticipated date of the first application
23 of the sludge to the proposed land application unit. [~~An owner of~~
24 ~~land located within one-quarter mile of the proposed land~~
25 ~~application unit who lives on that land is an affected person for~~
26 ~~purposes of Section 5.115, Water Code.~~]

27 SECTION 29. Section 361.321(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) A person affected by a ruling, order, decision, or other
3 act of the commission may appeal the action by filing a petition in
4 a district court of Travis County, except that a final decision by
5 the commission on an application for a permit, permit renewal, or
6 permit amendment that is subject to administrative review under
7 Subchapter J, Chapter 2001, Government Code, may be appealed to the
8 court of appeals for the Third Court of Appeals District.

9 SECTION 30. Section 382.032(a), Health and Safety Code, is
10 amended to read as follows:

11 (a) A person affected by a ruling, order, decision, or other
12 act of the commission or of the executive director, if an appeal to
13 the commission is not provided, may appeal the action by filing a
14 petition in a district court of Travis County, except that a final
15 decision by the commission on an application for a permit, permit
16 renewal, or permit amendment that is subject to administrative
17 review under Subchapter J, Chapter 2001, Government Code, may be
18 appealed to the court of appeals for the Third Court of Appeals
19 District.

20 SECTION 31. Section 382.055(g), Health and Safety Code, is
21 amended to read as follows:

22 (g) If the applicant meets the commission's requirements in
23 accordance with the schedule, the commission shall renew the
24 permit. If the applicant does not meet those requirements in
25 accordance with the schedule, the applicant must show in a public
26 hearing conducted by the commission [~~contested case proceeding~~] why
27 the permit should not expire immediately. The applicant's permit

1 is effective until:

2 (1) the final date specified by the commission's
3 report to the applicant;

4 (2) the existing permit is renewed; or

5 (3) the date specified by a commission order issued
6 following a public hearing [~~contested case proceeding~~] held under
7 this section.

8 SECTION 32. Sections 382.056(b), (g), (h), and (m), Health
9 and Safety Code, are amended to read as follows:

10 (b) The notice must include:

11 (1) a description of the location or proposed location
12 of the facility or federal source;

13 (2) the location at which a copy of the application is
14 available for review and copying as provided by Subsection (d);

15 (3) a description, including a telephone number, of
16 the manner in which the commission may be contacted for further
17 information;

18 (4) a description, including a telephone number, of
19 the manner in which the applicant may be contacted for further
20 information;

21 (5) a description of the procedural rights and
22 obligations of the public, printed in a font style or size that
23 clearly provides emphasis and distinguishes it from the remainder
24 of the notice, that includes a statement that informs the public of
25 the executive director's obligation under Section 5.5541(b), Water
26 Code, to hold a public hearing on the application [~~a person who may~~
27 ~~be affected by emissions of air contaminants from the facility,~~

1 ~~proposed facility, or federal source is entitled to request a~~
2 ~~hearing from the commission];~~

3 (6) a description of the procedure by which a person
4 may be placed on a mailing list in order to receive additional
5 information about the application;

6 (7) the time and location of any public meeting to be
7 held under Subsection (e); and

8 (8) any other information the commission by rule
9 requires.

10 (g) If, in response to the notice published under Subsection
11 (a) for a permit or permit amendment under Section 382.0518 or a
12 permit renewal review under Section 382.055, a person requests
13 during the period provided by commission rule that the commission
14 hold a public hearing and the request is not withdrawn before the
15 date the preliminary decision is issued, the applicant shall
16 publish notice of the preliminary decision in a newspaper, and the
17 commission shall seek public comment on the preliminary decision.
18 The commission shall consider the request for public hearing under
19 the procedures provided by Subsections (i)-(m) [~~(i)-(n)~~]. The
20 commission may not seek further public comment or hold a public
21 hearing under the procedures provided by Subsections (i)-(m)
22 [~~(i)-(n)~~] in response to a request for a public hearing on an
23 amendment, modification, or renewal that would not result in an
24 increase in allowable emissions and would not result in the
25 emission of an air contaminant not previously emitted.

26 (h) If, in response to the notice published under Subsection
27 (a) for a permit under Section 382.054, a person requests during the

1 public comment period provided by commission rule that the
2 commission hold a public hearing, the commission shall consider the
3 request under the procedures provided by Section 382.0561 and not
4 under the procedures provided by Subsections (i)-(m) [~~(i)-(n)~~].

5 (m) The chief clerk of the commission shall transmit the
6 executive director's decision and[~~and~~] the executive director's
7 response to public comments [~~and instructions for requesting that~~
8 ~~the commission reconsider the executive director's decision or hold~~
9 ~~a contested case hearing~~] to:

10 (1) the applicant;

11 (2) any person who submitted comments during the
12 public comment period;

13 (3) any person who requested to be on the mailing list
14 for the permit action; and

15 (4) any person who timely filed a request for a public
16 hearing in response to the notice published under Subsection (a).

17 SECTION 33. Section 382.059(d), Health and Safety Code, is
18 amended to read as follows:

19 (d) Not later than the 30th day after the date of issuance of
20 the draft permit under Subsection (c), parties may submit to the
21 commission any legitimate issues of material fact regarding whether
22 the choice of technology approved in the draft permit is the maximum
23 achievable control technology required under Section 112 of the
24 federal Clean Air Act (42 U.S.C. Section 7412) and may request a
25 public [~~contested case~~] hearing before the commission under Section
26 5.5541, Water Code. If a party requests a public [~~contested case~~]
27 hearing under this subsection, the commission shall conduct a

1 public [~~contested case~~] hearing and issue a final order issuing or
2 denying the permit amendment not later than the 120th day after the
3 date of issuance of the draft permit under Subsection (c).

4 SECTION 34. Sections 401.114(a) and (c), Health and Safety
5 Code, are amended to read as follows:

6 (a) Before the commission grants or renews a license to
7 process or dispose of low-level radioactive waste from other
8 persons, the commission shall give notice and shall provide an
9 opportunity for a public hearing in the manner provided by Section
10 5.5541, Water [~~the commission's formal hearing procedure and~~
11 ~~Chapter 2001, Government~~] Code.

12 (c) The commission shall mail, by certified mail in the
13 manner provided by the commission's rules, written notice to each
14 person who owns property adjacent to the proposed site. The notice
15 must be mailed not later than the 31st day before the date of the
16 hearing and must include the same information that is in the
17 published notice. [~~If true, the commission or the applicant must~~
18 ~~certify that the notice was mailed as required by this subsection,~~
19 ~~and at the hearing the certificate is conclusive evidence of the~~
20 ~~mailing.~~]

21 SECTION 35. Section 401.116(d), Health and Safety Code, is
22 amended to read as follows:

23 (d) The agency shall give notice and hold a public hearing
24 to consider the license amendment if a person [~~affected~~] files a
25 written complaint with the agency before the 31st day after the date
26 on which notice is published under Subsection (b). The agency shall
27 give notice of the hearing as provided by Section 401.114.

1 SECTION 36. Section 401.227(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) In selecting an application for the compact waste
4 disposal facility license, the commission shall:

5 (1) issue notice of the opportunity to submit an
6 application to dispose of low-level radioactive waste in accordance
7 with Section 401.228;

8 (2) review all applications received under
9 Subdivision (1) for administrative completeness;

10 (3) evaluate all administratively complete
11 applications in accordance with the evaluation criteria
12 established by Sections 401.233-401.236 and shall select the
13 application that has the highest comparative merit in accordance
14 with Section 401.232; and

15 (4) review the selected application under Subdivision
16 (3) for technical completeness in accordance with Section 401.237
17 and issue a draft license [~~in accordance with Sections 401.237 and~~
18 ~~401.238~~].

19 SECTION 37. Section 401.240(a), Health and Safety Code, is
20 amended to read as follows:

21 (a) Notwithstanding any other law, a person affected by an
22 action of the commission under this subchapter may file a petition
23 for judicial review of the action only after the commission takes
24 final action on a license application [~~under Section 401.239(d)~~].
25 A petition must be filed not later than the 30th day after the date
26 of the final action.

27 SECTION 38. Sections 401.264(a) and (e), Health and Safety

1 Code, are amended to read as follows:

2 (a) The commission on its own motion may or on ~~[the]~~ written
3 request ~~[of a person affected]~~ shall provide an opportunity for a
4 public hearing on an application over which the commission has
5 jurisdiction to determine whether to issue, renew, or amend a
6 license to process materials that produce by-product materials or a
7 license to dispose of by-product materials ~~[in the manner provided~~
8 ~~by Chapter 2001, Government Code, and permit appearances with or~~
9 ~~without counsel and the examination and cross-examination of~~
10 ~~witnesses under oath]~~.

11 (e) The determination is subject to administrative
12 ~~[judicial]~~ review under Subchapter J, Chapter 2001, Government
13 Code, and following administrative review or the denial of a
14 petition for administrative review, is subject to judicial review
15 in the court of appeals for the Third Court of Appeals District ~~[in~~
16 ~~a district court of Travis County]~~.

17 SECTION 39. The following provisions are repealed:

18 (1) Sections 361.068(b) and (c), Health and Safety
19 Code;

20 (2) Section 361.079(b), Health and Safety Code;

21 (3) Section 361.082(g), Health and Safety Code;

22 (4) Section 361.083, Health and Safety Code;

23 (5) Section 361.0832, Health and Safety Code;

24 (6) Section 361.0833, Health and Safety Code;

25 (7) Section 361.085(b), Health and Safety Code;

26 (8) Sections 361.088(e) and (f), Health and Safety
27 Code;

- 1 (9) Section 361.089(d), Health and Safety Code;
- 2 (10) Sections 382.056(n) and (o), Health and Safety
- 3 Code;
- 4 (11) Section 382.0566(c), Health and Safety Code;
- 5 (12) Section 382.058(c), Health and Safety Code;
- 6 (13) Section 382.059(f), Health and Safety Code;
- 7 (14) Section 401.003(15), Health and Safety Code;
- 8 (15) Section 401.238, Health and Safety Code;
- 9 (16) Section 401.239, Health and Safety Code;
- 10 (17) Sections 401.245(g) and (h), Health and Safety
- 11 Code;
- 12 (18) Section 401.2455(b), Health and Safety Code;
- 13 (19) Section 401.264(b), Health and Safety Code;
- 14 (20) Section 5.115, Water Code;
- 15 (21) Sections 5.228(c) and (d), Water Code;
- 16 (22) Section 5.315, Water Code;
- 17 (23) Section 5.402(c), Water Code;
- 18 (24) Section 5.552(f), Water Code;
- 19 (25) Section 5.556, Water Code;
- 20 (26) Section 5.557, Water Code;
- 21 (27) Section 5.558(c), Water Code;
- 22 (28) Sections 27.018(c) and (e), Water Code;
- 23 (29) Section 27.0513(f), Water Code; and
- 24 (30) Section 28.028, Water Code.

25 SECTION 40. (a) Not later than January 1, 2014, the chief
26 administrative law judge of the State Office of Administrative
27 Hearings shall adopt rules to implement Subchapter J, Chapter 2001,

1 Government Code, as added by this Act, and Section 2003.047,
2 Government Code, as amended by this Act.

3 (b) The changes in law made by this Act apply only to an
4 application for a permit to which Subchapter J, Chapter 2001,
5 Government Code, as added by this Act, applies that is filed on or
6 after the date the rules described by Subsection (a) of this section
7 take effect. An application for a permit filed before the date the
8 rules described by Subsection (a) of this section take effect is
9 governed by the law in effect on the date of filing, and that law is
10 continued in effect for that purpose.

11 SECTION 41. This Act takes effect September 1, 2013.