

CHAPTER 1044

S.B. No. 639

AN ACT

relating to the public meeting and notice and hearing requirements for proposed solid waste management facilities and to administrative and technical completeness of permit applications for those facilities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 361.068, Health and Safety Code, is amended to read as follows:

Sec. 361.068. ~~[WHEN APPLICATION IS]~~ ADMINISTRATIVELY COMPLETE APPLICATION. (a) A permit application is administratively complete when:

- (1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the department or the commission; and
- (2) the permit application is ready for technical review in accordance with the rules of the ~~[board of health or]~~ commission.

(b) *Once a determination that an application is administratively and technically complete has been made and the permit application has become the subject of a contested case under Section 3, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):*

(1) *the commission may not revoke the determination that an application is administratively or technically complete;*

(2) *the commission may request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted material provided that all parties may engage in discovery against all other parties, as provided by applicable law; and*

(3) *a request for additional information does not render the application incomplete.*

(c) *Subsection (b) does not:*

(1) *preclude an informal disposition of a contested case by stipulation, agreed settlement, consent order, or default; or*

(2) *restrict the right of any party to conduct discovery against any applicable party under other law.*

SECTION 2. Subsection (b), Section 361.137, Health and Safety Code, is amended to read as follows:

(b) *The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than \$2,000 nor more than \$50,000. An additional fee may not be assessed for a draft permit returned for further processing unless the application is withdrawn.*

SECTION 3. Section 361.0791, Health and Safety Code, is amended to read as follows:

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT. (a) Notwithstanding other law, the commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission, on request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) *Notwithstanding other law, the commission shall hold a public meeting on an application for a new municipal solid waste management facility in the county in which the proposed municipal solid waste management facility is to be located.*

(c) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) or (b) if notice is provided as required by this section.

(d) ~~[(e)]~~ A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) ~~[(d)]~~ If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission, department, or Texas Air Control Board, as appropriate, an affidavit certifying that the notice

was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(f) [(e)] The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the permit application.

(g) [(f)] The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

SECTION 4. Subsection (b), Section 361.081, Health and Safety Code, is amended to read as follows:

(b) The applicant must certify to the department or commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section. *Substantial compliance with the notice requirements of Subsection (a) is sufficient for the commission to exercise jurisdiction over an application for a solid waste facility.*

SECTION 5. Section 361.0234, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) *The assessments and rules adopted under Sections 361.0232 and 361.0234 shall not be retroactively applied to any application that was declared administratively and technically complete and for which public hearings had commenced prior to the original effective date of those sections.*

SECTION 6. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply only to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is received by the Texas Water Commission or its successor on or after the effective date of this Act and to an application for a permit that is subject to Subsection (c), Section 361.0234, Health and Safety Code, as added by this Act.

(b) The change in law made by Subsection (b), Section 361.081, Health and Safety Code, as amended by this Act, applies to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is:

- (1) received by the Texas Water Commission or its successor on or after the effective date of this Act; or
- (2) pending before the Texas Water Commission or its successor on the effective date of this Act.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 6, 1993: Yeas 18, Nays 8; the Senate concurred in House amendments on May 28, 1993: Yeas 28, Nays 3; passed the House, with amendments, on May 26, 1993: Yeas 128, Nays 1, two present not voting.

Filed without signature June 20, 1993.

Effective June 20, 1993.