

Amend CSSB 1952 as follows:

(1) In SECTION 8B.09 of the bill (House Committee Report, page 183, line 12), strike "State Office of Administrative Hearings" and substitute "commission's office of hearings examiners".

(2) Add the following article to Part 8 of the bill:

ARTICLE 8J. ADMINISTRATIVE HEARINGS

SECTION 8J.01. Subchapter H, Chapter 5, Water Code, is amended to read as follows:

SUBCHAPTER H. DELEGATION OF HEARINGS; OFFICE OF HEARING EXAMINERS

Sec. 5.311. DEFINITION. In this subchapter, "office" means the office of hearing examiners created under Section 5.312.

Sec. 5.312. OFFICE OF HEARING EXAMINERS. (a) The commission shall create an office of hearing examiners to assist the commission in carrying out its powers and duties.

(b) The office is:

(1) independent of the executive director and the divisions of the commission; and

(2) under the exclusive control of the commission.

Sec. 5.313. ORGANIZATION OF OFFICE OF HEARING EXAMINERS. The office is under the direction of a chief hearing examiner. The chief hearing examiner and all assistant hearing examiners employed in the office must be:

(1) attorneys licensed to practice law in this state; and

(2) employees of the commission.

Sec. 5.314. DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to a hearing examiner the responsibility to hear any matter before the commission.

(b) A hearing examiner shall:

(1) prepare for and hold any contested case hearing as directed by the commission; and

(2) report to the commission on the hearing in the manner provided by law.

Sec. 5.315. DEADLINE TO COMPLETE HEARING; DOCKET CONTROL. (a) In referring a matter for hearing, the executive director by rule shall specify to a hearing examiner the date by which the

hearing examiner is expected to complete a proceeding and submit a proposal for decision to the commission.

(b) A hearing examiner may extend a proceeding past the date specified under Subsection (a) if the hearing examiner determines that the failure to grant the extension would deprive a party of due process or another constitutionally granted right.

(c) A hearing examiner shall establish a docket control order designed to complete the proceeding by the date specified under Subsection (a).

Sec. 5.316. HEARINGS; SCOPE. The scope of a hearing may be limited by stipulations of the parties or summary dispositions as provided by commission rule.

Sec. 5.317. COMMISSION RULES FOR HEARINGS. (a) The commission by rule shall:

(1) provide for subpoenas and commissions for depositions;

(2) require that discovery be conducted in accordance with the Texas Rules of Civil Procedure and determine the level of discovery under Rule 190, Texas Rules of Civil Procedure, appropriate for each type of case considered by the commission, considering the nature and complexity of the case; and

(3) provide for certification to the commission of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.

(b) Rules adopted under Subsection (a)(3) must address, at a minimum:

(1) the issues that are appropriate for certification; and

(2) the procedure to be used in certifying the issue.

Sec. 5.318. HEARINGS; SANCTIONS. (a) A hearing examiner hearing a case on behalf of the commission may impose sanctions as provided under Subsection (c) against a party or its representative for:

(1) filing a motion or pleading that is groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or  
(C) for any other improper purpose to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the hearing examiner or the commission.

(b) A hearing examiner may impose a sanction under Subsection (a):

(1) on the motion of:

(A) a party; or

(B) the hearing examiner; and

(2) only after notice and an opportunity for a hearing.

(c) A sanction imposed under Subsection (a) may include issuance of an order:

(1) disallowing further discovery of any kind or any particular kind by the offending party;

(2) charging all or part of the expenses of discovery against the offending party or its representative;

(3) holding that designated facts be considered admitted for the purposes of the hearing;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing wholly or partly requests for relief by the offending party and excluding evidence in support of those requests; and

(6) wholly or partly striking pleadings or testimony or both pleadings and testimony.

Sec. 5.319. FINDINGS AND PROPOSAL FOR DECISION; ORDER OF COMMISSION. (a) After hearing evidence and receiving legal argument, a hearing examiner shall make findings of fact, conclusions of law, and any ultimate finding required by statute, all of which shall be separately stated.

(b) The hearing examiner shall make a proposal for decision

to the commission and shall serve the proposal for decision on all parties.

(c) The commission shall give each party an opportunity to file:

(1) exceptions to the proposal for decision; and

(2) briefs related to the issues addressed in the proposal for decision.

(d) Except as provided by Section 361.0832, Health and Safety Code, the commission shall consider:

(1) a proposal for decision prepared by a hearing examiner;

(2) any exceptions by the parties; and

(3) briefs of the parties.

(e) The commission may amend a proposal for decision, including any finding of fact, but any amendment to the proposal or order from the amended proposal must be based solely on the record made before the hearing examiner. Any amendment to a proposal must be accompanied by an explanation of the basis of the amendment.

(f) The commission may refer a matter back to the hearing examiner to:

(1) reconsider a finding or conclusion stated in a proposal for decision;

(2) receive additional evidence; or

(3) make additional findings of fact or conclusions of law.

(g) The commission shall serve a copy of the commission's order, including its findings of fact and conclusions of law, on each party.

Sec. 5.320. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. Chapter 2001, Government Code, applies to a hearing under this subchapter except to the extent that it conflicts with this subchapter.

Sec. 5.321. ALTERNATIVE DISPUTE RESOLUTION. (a) If the commission has conducted an unsuccessful alternative dispute resolution procedure, a hearing examiner may not refer a case to an alternative dispute resolution procedure unless each party agrees to the referral.

(b) If the commission has not conducted an alternative dispute resolution procedure, the hearing examiner shall consider the commission's recommendation in determining whether to order the referral of the case to an alternative dispute resolution procedure.

Sec. 5.322. REFERENCE TO ADMINISTRATIVE LAW JUDGE. A reference to an administrative law judge in this chapter or Chapter 26 or 31 of this code, or Chapter 361 or 382, Health and Safety Code, means a hearing examiner under this subchapter. [DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility to hear any matter before the commission and to issue interlocutory orders related to interim rates under Chapter 13.

~~[(b) Except as provided in Subsection (a), the administrative law judge shall report to the commission on the hearing in the manner provided by law.~~

~~[Sec. 5.312. TIME LIMIT FOR ISSUANCE OR DENIAL OF PERMITS. (a) Except as provided in Subsection (b), all permit decisions shall be made within 180 days of the receipt of the permit application or application amendment or the determination of administrative completeness, whichever is later.~~

~~[(b) This section does not apply to permits issued under federally delegated or approved programs unless allowed under that program.~~

~~[Sec. 5.313. HEARING EXAMINERS REFERENCED IN LAW. Any reference in law to a hearing examiner who has a duty related to a case pending before the commission means an administrative law judge of the State Office of Administrative Hearings.]~~

SECTION 8J.02. (a) On January 1, 2004, all equipment, data, facilities, case files, records, and other items of the Natural Resources Division of the State Office of Administrative Hearings are transferred to the Texas Commission on Environmental Quality. The Natural Resources Division of the State Office of Administrative Hearings is abolished.

(b) Not later than January 1, 2004, the Texas Commission on Environmental Quality shall:

(1) employ hearing examiners who have the expertise necessary to conduct hearings with technical and other specialized subject matters that may come before the commission; and

(2) implement all administrative changes necessary for the commission to assume the functions of the administrative law judges in the Natural Resources Division of the State Office of Administrative Hearings.

(c) Except as provided in Subsections (d) and (e) of this section, the State Office of Administrative Hearings shall continue to employ an administrative law judge who is hearing a case pending before the State Office of Administrative Hearings on behalf of the Texas Commission on Environmental Quality on January 1, 2004, until the judge renders a proposal for decision in the case, and the judge shall continue to hear a case assigned to the judge as if the abolition of the Natural Resources Division of the State Office of Administrative Hearings had not occurred.

(d) If a hearing examiner or administrative law judge employed by the State Office of Administrative Hearings is hearing a case pending before the Texas Commission on Environmental Quality on the effective date of this Act and that examiner or judge is offered and accepts a position as a hearing examiner of the commission, the chief hearing examiner of the Office of Hearing Examiners of the Texas Commission on Environmental Quality shall assign that case to that hearing examiner to render a proposal for decision.

(e) If an administrative law judge accepts a position as a hearing examiner in the Office of Hearing Examiners of the Texas Commission on Environmental Quality, the State Office of Administrative Hearings shall transfer any case pending before that office to the Office of Hearing Examiners of the Texas Commission on Environmental Quality and the commission shall assign the case to the judge to render a proposal for decision.

(f) As soon as practicable, but not later than January 1, 2004, the chief administrative law judge of the State Office of Administrative Hearings shall consult with the Texas Commission on Environmental Quality to:

(1) assist the commission in determining the number of

and requirements for hearing examiners needed for the commission to conduct hearings effectively; and

(2) make necessary administrative changes in that office and the commission.