

BILL ANALYSIS

C.S.H.B. 1825
By: Price
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a groundwater conservation district may contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing, but is not required to do so. C.S.H.B. 1825 seeks to provide objectivity and balance in the permitting and regulatory process by requiring a groundwater conservation district to contract with the SOAH to conduct a contested case hearing if requested by a permit applicant or other party to the case.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to groundwater conservation districts in SECTION 2 and SECTION 5 of this bill.

ANALYSIS

SECTION 1. Amends Sections 36.406, Water Code, as follows:

Sec. 36.406. (a) Provides that a hearing must be conducted by a quorum of the board; an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or the State Office of Administrative Hearings (SOAH) under Section 36.416 (relating to hearings conducted by the SOAH).

(b) Provides that except under Subsection (c) (relating to a hearing conducted by a quorum of the board) or under Section 36.416, the board president or the hearing examiner must serve as the presiding officer at the hearing.

SECTION 2. Amends Section 36.416, Water Code, as follows:

Sec. 36.416. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS; RULES. (a) Provides that the SOAH hearings must be conducted in accordance with Subchapters C, D, and F, Chapter 2001, Government Code. Authorizes a groundwater conservation district to adopt rules for a hearing conducted by the SOAH that are consistent with the SOAH's procedural rules.

(b) Requires that a district must contract with the SOAH to conduct a hearing if requested by the applicant or other party to a contested case. If the district does not prescribe a deadline by rule, this subsection requires the applicant or other party to request the hearing before the SOAH not later than the 14th day before the date the evidentiary hearing is scheduled to begin. Requires the hearing to be held in Travis County or at a location described by Section 36.403 (c) (relating to hearings which shall be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location). Provides that the district must choose the location.

(c) Requires that the party requesting the hearing before the SOAH must pay all costs associated with the contract for the hearing and must deposit with the district an amount sufficient to pay the contract amount before the hearing begins. Requires that the district, at the conclusion of the hearing, must refund any excess money to the paying party.

Authorizes all other costs to be assessed as authorized by provisions of law relating to groundwater conservation districts or by district rules.

SECTION 3. Amends Subchapter M, Chapter 36, Water Code, by adding Sec. 36.4165, as follows:

Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS. Provides that in a proceeding for a permit application or amendment in which a district has contracted with the SOAH for a contested case hearing, the board of directors of a district has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with Section 2001.058, Government Code (relating to a hearing conducted by the SOAH).

SECTION 4. Amends the heading to Section 36.418, Water Code, as follows: RULES; CONTESTED CASE HEARINGS; APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.

SECTION 5. Amends Section 36.418, Water Code, by amending Subsection (b) and adding Subsection (c) as follows:

(b) Provides that Chapter 2001, Government Code, does not apply to hearing under this subchapter, except under this Section and Sections 36.416 and 36.4165.

(c) Requires that a groundwater conservation district must adopt rules to establish a procedure for preliminary and evidentiary hearings; allow the presiding officer, at a preliminary hearing by the district and before a referral of the case to the SOAH, to determine a party's right to participate in a hearing according to Section 36.415 (b) (2) (relating to limiting participation in a hearing on a contested application to certain persons); and set a deadline for a party to file a request to refer a contested case to the SOAH under Sec. 36.416.

SECTION 6. Provides that the change in law made by this Act is not retroactive and applies only to a permit or permit application determined to be administratively complete on or after the effective date of this Act.

SECTION 7. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1825 differs from the original by authorizing, whereas the original requires, a groundwater conservation district to adopt rules for a hearing conducted by the SOAH that are consistent with the procedural rules of the SOAH.

C.S.H.B. 1825 differs from the original by requiring an applicant or other party to request a hearing before the SOAH not later than the 14th day before the date an evidentiary hearing is scheduled to begin if the district does not prescribe a deadline by rule, whereas the original requires a district to contract with SOAH stated not later than the 14th day before the date a hearing is scheduled to begin if the district does not prescribe a contract deadline by rule.

C.S.H.B 1825 differs from the original by specifying the requested hearing as a hearing before the SOAH, whereas the original only requires a party requesting a hearing to pay all costs associated with the contract for the hearing. The substitute differs from the original by specifying in a proceeding for a permit application or amendment in which the district has contracted with the SOAH for a contested case hearing, whereas the original only allows the board of directors of a district the authority to make a final decision. The substitute differs from

the original by specifying rules to establish a procedure for a preliminary and evidentiary hearing, whereas the original provides for a preliminary or other type of hearing.