

BILL ANALYSIS

S.B. 693
By: Estes
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, a groundwater conservation district may hear a contested case internally or may contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing.

SOAH hearing is an attractive option for applicants because an administrative law judge makes a proposal for a decision after developing findings of fact and conclusions of law. Findings and conclusions are important and provide guidance for the district in its decision. A SOAH hearing would also provide the districts with a neutral, third party examiner that is better equipped to handle the administrative issues associated with contested case hearings. The districts are willing to participate in an external review of contested cases; however, they would not be able to bear the costs associated with entering into contracts with SOAH each time a contested case applicant requests an external review.

As a means of providing objectivity and balance in the permitting and regulatory process, S.B. 693 amends Chapter 36 (Groundwater Conservation Districts), Water Code, to require a groundwater conservation district to contract with SOAH to conduct a contested case hearing if requested by a permit applicant or other party to the hearing. S.B. 693 requires the applicant to bear the costs of the SOAH hearing.

S.B. 693 amends current law relating to permit application and amendment hearings conducted by groundwater conservation districts and the State Office of Administrative Hearings.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Sections 36.406(a) and (b), Water Code, as follows:

- (a) Requires that a hearing be conducted by certain persons, including the State Office of Administrative Hearing (SOAH) under Section 36.416.
- (b) Requires the president of the board of directors of a district (board) or the hearings examiner, except as provided by Subsection (c) (relating to authorizing the directors conducting the hearing, if the hearing is conducted by a quorum of the board and the board president is not present, to select a director to serve as the presiding officer) or Section 36.416, to serve as the presiding officer at the hearing.

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

Sec. 36.416. New heading: HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS; RULES. (a) Creates this subsection from existing text. Authorizes a district to adopt rules for a hearing conducted under this section that are consistent with the procedural rules of SOAH.

(b) Requires a district, if requested by the applicant or other party to a contested case, to contract with SOAH to conduct the hearing. Requires the applicant or other party, if the district does not prescribe a contract deadline by rule, to request the hearing before SOAH not later than the 14th day before the date the 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 location requirement for hearings). Requires the district to choose the location.

(c) Requires the party requesting the hearing before SOAH to pay all costs associated with the contract for the hearing and to deposit with the district an amount sufficient to pay the contract amount before the hearing begins. Requires the district, at the conclusion of the hearing, to refund any excess money to the paying party. Authorizes all other costs to be assessed as authorized by this chapter or district rules.

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

Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS. Provides that in a proceeding for a permit applicant or amendment in which a district has contracted with SOAH for a contested case hearing, the board 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 (Hearing Conducted by State Office of Administrative Hearings), Government Code.

SECTION 4. Amends the heading to Section 36.418, Water Code, to read as follows:

Sec. 36.418. 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 except as provided by this section and Sections 36.416 and 36.4165, Chapter 2001 (Administrative Procedure), Government Code, does not apply to a hearing under this subchapter. Makes a nonsubstantive change.

(c) Requires the district to adopt rules to:

(1) establish a procedure for preliminary and evidentiary hearings;

(2) allow the presiding officer, at a preliminary hearing by the district and before a referral of the case to 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); and

(3) set a deadline for a party to file a request to refer a contested case to SOAH under Section 36.416.

SECTION 6. Makes application of this Act prospective.

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.