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H.B. No. 3234

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for action by the Texas Commission on Environmental Quality on an application for a water right.

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

SECTION 1. Section 11.129, Water Code, is amended to read as follows:

Sec. 11.129. REVIEW OF APPLICATION[~~, — AMENDMENT~~]. (a) In this section:

(1) "Administratively complete" means an application includes the information and fees required under Sections 11.124, 11.125, 11.1271, and 11.128 and, if applicable, Sections 11.126, 11.127, and 11.1272.

(2) "Technical review" means the part of the process of reviewing an application after the executive director has determined the application is administratively complete in which technical material is analyzed and reviewed in order to prepare a draft permit and draft notice.

(b) Not later than the 30th working day after the date the executive director receives an application, the executive director shall review the application and provide to the applicant:

(1) written notice that the application is administratively complete; or

(2) a written request for information that describes in detail the information that the applicant must provide in order

1 for the application to be considered administratively complete.

2 (c) Not later than the 30th day after the date an applicant
3 receives a request under Subsection (b)(2), the applicant must
4 submit a response to the request. Not later than the 30th working
5 day after the date the executive director receives a timely
6 response, the executive director shall review the response and
7 provide to the applicant:

8 (1) written notice that the application is
9 administratively complete; or

10 (2) a written request for information that describes
11 in detail the information that the applicant must provide in order
12 for the application to be considered administratively complete.

13 (d) The applicant may request an extension of the time to
14 submit a response to a request under Subsection (b)(2) or (c)(2).
15 The executive director shall grant the request if the applicant
16 demonstrates good cause for the extension. An extension under this
17 subsection extends the deadline provided by Subsection (e) by the
18 same amount of time as the amount of the extension.

19 (e) Not later than the 180th day after the date the
20 executive director receives the application, the executive
21 director shall:

22 (1) provide the applicant written notice that the
23 application is administratively complete; or

24 (2) return the application and the entire filing fee
25 to the applicant and provide the applicant with a list of the
26 deficiencies in the application.

27 (f) The applicant is entitled to appeal the return of the

1 application and dispute an application deficiency in a hearing
2 before the commission. The commission shall review the application
3 and related documents, rule on the issues presented at the hearing,
4 and issue an order:

5 (1) directing the executive director to return the
6 application to the applicant;

7 (2) requesting additional information as required by
8 the executive director to render the application administratively
9 complete; or

10 (3) declaring that the application is
11 administratively complete and scheduling the technical review of
12 the application.

13 (g) If the commission requests additional information from
14 the applicant under Subsection (f)(2), the applicant must provide
15 the information to the commission not later than the 30th day after
16 the date the commission issues the request. The commission shall
17 review the material and issue an order described by Subsection
18 (f)(1) or (3), as applicable.

19 (h) After the executive director or the commission
20 determines that the application is administratively complete, the
21 executive director shall conduct a technical review of the
22 application. As part of the review, the executive director shall
23 determine whether the applicable water conservation, drought
24 contingency, and water management plans under Sections 11.1271,
25 11.1272, and 11.1273 are adequate.

26 (i) Not later than the 180th day after the date on which the
27 technical review begins, the executive director shall provide the

1 applicant with:

2 (1) written notice that the technical review is
3 complete, a draft permit, a draft notice, and technical memoranda
4 associated with the application; or

5 (2) a written request for technical information as
6 determined by the executive director to be necessary for the
7 completion of the technical review.

8 (j) With notice to the applicant, the executive director may
9 extend the deadline provided by Subsection (i) for a period of 30
10 days. The executive director may not extend the deadline more than
11 three times.

12 (k) Not later than the 60th day after the date the applicant
13 receives a request under Subsection (i)(2), the applicant must
14 provide the requested information to the executive director.

15 (l) The applicant may request an extension of the time to
16 submit a response to a request under Subsection (i)(2). The
17 executive director shall grant the request if the applicant
18 demonstrates good cause for the extension. An extension under this
19 subsection extends the deadline provided by Subsection (n) by the
20 same amount of time as the amount of the extension.

21 (m) Not later than the 60th day after the date the executive
22 director receives a timely response to a request under Subsection
23 (i)(2), the executive director shall review the response and
24 provide the applicant with:

25 (1) written notice that the technical review is
26 complete, a draft permit, a draft notice, and technical memoranda
27 associated with the application; or

1 (2) written notice that the response to the request
2 for technical information is deficient.

3 (n) If the executive director provides notice under
4 Subsection (m)(2), the executive director and the applicant must
5 collaborate in a good faith effort to resolve the deficiency. Not
6 later than the 180th day after the date the executive director
7 provides the notice, the executive director shall:

8 (1) provide the applicant with written notice that the
9 technical review is complete, a draft permit, a draft notice, and
10 technical memoranda associated with the application; or

11 (2) return the application and the use fee and the
12 unused portion of the notice fee as prescribed by commission rule to
13 the applicant and provide the applicant with a list of the
14 deficiencies with the application.

15 (o) The applicant is entitled to appeal the return of the
16 application and dispute an application deficiency in a hearing
17 before the commission. The commission shall review the application
18 and related documents, rule on the issues presented at the hearing,
19 and issue an order:

20 (1) directing the executive director to return the
21 application to the applicant;

22 (2) requesting additional information as required by
23 the commission; or

24 (3) requiring the executive director to prepare the
25 draft permit, draft notice, and technical memoranda associated with
26 the application and written notice that the technical review is
27 complete.

1 (p) If the commission requests additional information from
2 the applicant under Subsection (o)(2), the applicant must provide
3 the information to the commission not later than the 30th day after
4 the date the commission issues the request. The commission shall
5 review the material and issue an order described by Subsection
6 (o)(1) or (3), as applicable.

7 (q) The applicant may request an extension of the time to
8 submit a response to a request under Subsection (o)(2). The
9 commission shall grant the request if the applicant demonstrates
10 good cause for the extension. An extension under this subsection
11 extends the deadline provided by Subsection (p) by the same amount
12 of time as the amount of the extension.

13 (r) Not later than the 14th day after the date the applicant
14 receives the draft permit, draft notice, and technical memoranda
15 associated with the application, the applicant must provide the
16 executive director with:

17 (1) the applicant's comments on the draft permit,
18 draft notice, and technical memoranda; or

19 (2) a statement that the applicant has no comment on
20 the draft permit, draft notice, or technical memoranda.

21 (s) The applicant may request an extension of the time to
22 submit comments under Subsection (r)(1). The commission shall
23 grant the request if the applicant demonstrates good cause for the
24 extension. An extension under this subsection extends the deadline
25 provided by Subsection (r) by the same amount of time as the amount
26 of the extension.

27 (t) The executive director shall file the draft permit,

1 draft notice, and technical memoranda associated with the
2 application with the chief clerk of the commission:

3 (1) not later than the 14th day after the date the
4 executive director receives comments under Subsection (r)(1),
5 during which time the executive director and the applicant must
6 collaborate to address the comments; or

7 (2) immediately on receipt of a statement described by
8 Subsection (r)(2).

9 (u) Notwithstanding any other provision of this section, if
10 the executive director makes a written determination that notice is
11 not required for an application, the executive director shall grant
12 or deny the permit for which the application is filed not later than
13 the 300th day after the date the executive director receives the
14 application. This period shall be extended by the same amount of
15 time as the amount of any extension of time granted to the applicant
16 for the provision of information [~~The commission shall determine~~
17 ~~whether the application, maps, and other materials comply with the~~
18 ~~requirements of this chapter and the rules of the commission. The~~
19 ~~commission may require amendment of the application, maps, or other~~
20 ~~materials to achieve necessary compliance].~~

21 SECTION 2. Section 11.133, Water Code, is amended to read as
22 follows:

23 Sec. 11.133. HEARING. (a) At the time and place stated in
24 the notice, the commission shall hold a hearing on the application.
25 Any person may appear at the hearing in person or by attorney or may
26 enter an [~~his~~] appearance in writing. Any person who appears may
27 present objection to the issuance of the permit. The commission may

1 receive evidence, orally or by affidavit, in support of or in
2 opposition to the issuance of the permit, and it may hear arguments.

3 (b) The commission may not refer an issue regarding an
4 application to the State Office of Administrative Hearings for a
5 hearing unless the commission determines that the issue is:

6 (1) a disputed question of fact; and

7 (2) relevant and material to a decision on the
8 application.

9 (c) If the commission grants a request for a hearing, the
10 commission shall:

11 (1) determine the number and scope of issues to be
12 referred to the State Office of Administrative Hearings for a
13 hearing; and

14 (2) consistent with the nature and number of issues to
15 be considered at the hearing, specify the maximum expected duration
16 of the hearing, which may not exceed a period of 270 days.

17 (d) If the application has been determined to be
18 administratively complete and the time for requesting more
19 information under Section 11.129(i)(2) has expired, the
20 commission:

21 (1) may not revoke that determination; and

22 (2) may request additional information from the
23 applicant only if the information is necessary to clarify, modify,
24 or supplement previously submitted information.

25 (e) A request for information under Subsection (d)(2) does
26 not render the application administratively incomplete.

27 (f) If the commission refers an issue regarding an

1 application to the State Office of Administrative Hearings for a
2 hearing, the administrative law judge who conducts the hearing may
3 not grant party status to a person who failed to seek party status
4 from the commission before the issue was referred to the office.

5 (g) In the event of a conflict between this section and any
6 other law, this section prevails.

7 SECTION 3. (a) As soon as practicable after the effective
8 date of this Act, the Texas Commission on Environmental Quality
9 shall adopt rules to implement the changes in law made by this Act.

10 (b) The changes in law made by this Act apply only to an
11 application for a new or amended water right filed with the Texas
12 Commission on Environmental Quality on or after the effective date
13 of the rules adopted under Subsection (a) of this section. An
14 application filed before the effective date of the rules adopted
15 under Subsection (a) of this section is governed by the law in
16 effect on the date the application was filed, and the former law is
17 continued in effect for that purpose.

18 (c) On notice to the applicant, beginning on the effective
19 date of the rules adopted under Subsection (a) of this section, the
20 executive director of the Texas Commission on Environmental Quality
21 may extend the period for technical review of an application for a
22 new or amended water right under Section 11.129, Water Code, as
23 amended by this Act, by a period not to exceed 18 months from the
24 date the rules take effect if:

25 (1) on the effective date of the rules there are
26 applications for new or amended water rights pending before the
27 commission the technical review of which has not been completed;

1 and

2 (2) the applications described by Subdivision (1)
3 affect the same river basin as the application for which the
4 technical review period is extended.

5 (d) During an extension under Subsection (c) of this
6 section, the executive director shall take all practicable measures
7 to substantially meet all other applicable deadlines in Section
8 11.129, Water Code, as amended by this Act, related to the technical
9 review of an application.

10 SECTION 4. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2013.