

BILL ANALYSIS

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S.B. 109
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that the regulatory process and amount of time needed to secure a state water right impedes progress towards timely delivery of needed water supply projects. Permit applications with the Texas Commission on Environmental Quality (TCEQ) are subject to prolonged TCEQ reviews, in some cases spanning nearly a decade. Next to the TCEQ's review of permit applications, the contested case hearing process further delays TCEQ's consideration of a water right application. Interested parties contend that these regulatory and administrative delays preclude the timely, expeditious development of water supply projects, including those described within the State Water Plan.

As introduced, S.B. 109 creates a defined process for TCEQ review and processing of water rights applications. The bill prescribes processes and timelines for TCEQ's administrative review, technical review, and final review of water rights application. The bill also limits issues for consideration within a contested case hearing, narrows the parties eligible to participate within a hearing, and prescribes a deadline for hearing completion. The underlying purpose for S.B. 109 is to provide regulatory certainty and specific timelines for the processing and consideration of water rights permit applications. The intent of these changes is to ensure the timely, expeditious processing and issuance of water rights permits for needed water supply projects.

As proposed, S.B. 109 amends current law relating to the procedure for action by the Texas Commission on Environmental Quality on an application for a water right.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.129, Water Code, as follows:

Sec. 11.129. New heading: REVIEW OF APPLICATION. (a) Defines "administratively complete" and "technical review."

(b) Requires the executive director of the Texas Natural Resource Conservation Commission (executive director), not later than the 30th working day after the date the executive director receives an application, to 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 for the application to be considered administratively complete.

(c) Requires an applicant, not later than the 30th day after the date the applicant receives a request under Subsection (b)(2), to submit a response to the request. Requires the executive director, not later than the 30th working day after the date the executive director receives a timely response, to review the response 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 for the application to be considered administratively complete.

(d) Authorizes the applicant to request an extension of the time to submit a response to a request under Subsection (b)(2) or (c)(2). Requires the executive director to grant the request if the applicant demonstrates good cause for the extension. Provides that an extension under this subsection extends the deadline provided by Subsection (e) by the same amount of time as the amount of the extension.

(e) Requires the executive director, not later than the 180th day after the date the executive director receives the application, to:

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

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

(f) Provides that the applicant is entitled to appeal the return of the application and dispute an application deficiency in a hearing before the Texas Natural Resource Conservation Commission (TNRCC). Requires TNRCC to review the application and related documents, rule on the issues presented at the hearing, and issue an order:

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

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

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

(g) Requires the applicant to provide the information to TNRCC not later than the 30th day after the date TNRCC issues the request, if TNRCC requests additional information from the applicant under Subsection (f)(2). Requires TNRCC to review the material and issue an order described by Subsection (f)(1) or (3), as applicable.

(h) Requires the executive director to conduct a technical review of the application after the executive director or TNRCC determines that the application is administratively complete. Requires the executive director to determine whether the applicable water conservation and drought contingency plans under Sections 11.1271 (Additional Requirements: Water Conservation Plans) and 11.1272 (Additional Requirement: Drought Contingency Plans for Certain Applicants and Water Right Holders) are adequate as part of the review.

(i) Requires the executive director, not later than the 180th day after the date on which the technical review begins, to provide the applicant with:

- (1) written notice that the technical review is complete, a draft permit, a draft notice, and technical memoranda associated with the application; or
- (2) a written request for technical information as determined by the executive director to be necessary for the completion of the technical review.

(j) Authorizes the executive director, with notice to the applicant, to extend the deadline provided by Subsection (i) for a period of 30 days. Prohibits the executive director from extending the deadline more than three times.

(k) Requires the applicant to provide the requested information to the executive director not later than the 60th day after the date the applicant receives a request under Subsection (i)(2).

(l) Authorizes the applicant to request an extension of the time to submit a response to a request under Subsection (i)(2). Requires the executive director to grant the request if the applicant demonstrates good cause for the extension. Provides that an extension under this subsection extends the deadline provided by Subsection (k) by the same amount of time as the amount of the extension.

(m) Requires the executive director, if the executive director grants an extension under Subsection (j) or (l), to extend the deadline under Subsection (i) or (k), as appropriate, for an application:

- (1) received after the application for which the extension was granted under Subsection (j) or (l); and
- (2) that relates to a new appropriation of water in the same river basin as the application for which the extension was granted under Subsection (j) or (l).

(n) Requires the executive director to provide notice in a timely manner to an applicant who receives an extension under Subsection (m).

(o) Requires the executive director, not later than the 60th day after the date the executive director receives a timely response to a request under Subsection (i)(2), to review the response and provide the applicant with:

- (1) written notice that the technical review is complete, a draft permit, a draft notice, and technical memoranda associated with the application; or
- (2) written notice that the response to the request for technical information is deficient.

(p) Requires the executive director, if the executive director provides notice under Subsection (o)(2), to collaborate in a good faith effort to resolve the deficiency. Requires the executive director, not later than the 180th day after the date the executive director provides the notice, to:

- (1) provide the applicant with written notice that the technical review is complete, a draft permit, a draft notice, and technical memoranda associated with the application; or
- (2) return the application and the use fee and the unused portion of the notice fee as prescribed by TNRCC rule to the applicant and provide the applicant with a list of the deficiencies with the application.

(q) Provides that the applicant is entitled to appeal the return of the application and dispute an application deficiency in a hearing before TNRCC. Requires

TNRCC to review the application and related documents, rule on the issues presented at the hearing, and issue an order:

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

(2) requesting additional information as required by TNRCC; or

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

(r) Requires the applicant to provide the information to TNRCC not later than the 30th day after the date TNRCC issues the request, if TNRCC requests additional information from the applicant under Subsection (q)(2). Requires TNRCC to review the material and issue an order described by Subsection (q)(1) or (3), as applicable.

(s) Authorizes the applicant to request an extension of the time to submit a response to a request under Subsection (q)(2). Requires TNRCC to grant the request if the applicant demonstrates good cause for the extension. Provides that an extension under this subsection extends the deadline provided by Subsection (r) by the same amount of time as the amount of the extension.

(t) Requires the applicant to provide the executive director, not later than the 14th day after the date the applicant receives the draft permit, draft notice, and technical memoranda associated with the application, with:

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

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

(u) Authorizes the applicant to request an extension of the time to submit comments under Subsection (t)(1). Requires TNRCC to grant the request if the applicant demonstrates good cause for the extension.

(v) Requires the executive director to file the draft permit, draft notice, and technical memoranda associated with the application with the chief clerk of TNRCC:

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

(2) immediately on receipt of a statement described by Subsection (t)(2).

(w) Requires the executive director to grant or deny the permit for which the application is filed not later than the 300th day after the date the executive director receives the application if the executive director makes a written determination that notice is not required for an application, notwithstanding any other provision of this section.

Deletes existing text requiring TNRCC to determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of TNRCC.

Deletes existing text authorizing TNRCC to require amendment of the application, maps, or other materials to achieve necessary compliance.

SECTION 2. Amends Section 11.133, Water Code, as follows:

Sec. 11.133. HEARING. (a) Creates this subsection from existing text. Makes a nonsubstantive change.

(b) Prohibits TNRCC from referring an issue regarding an application to the State Office of Administrative Hearings (SOAH) for a hearing unless TNRCC determines that the issue is:

- (1) a disputed question of fact; and
- (2) relevant and material to a decision on the application.

(c) Requires TNRCC, if TNRCC grants a request for a hearing, to:

- (1) determine the number and scope of issues to be referred SOAH for a hearing; and
- (2) consistent with the nature and number of issues to be considered at the hearing, specify the maximum expected duration of the hearing, which may not exceed a period of 270 days.

(d) Provides that, if the application has been determined to be administratively complete and the time for requesting more information under Section 11.129(i)(2) has expired, TNRCC:

- (1) is prohibited from revoking that determination; and
- (2) is authorized to request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted information.

(e) Provides that a request for information under Subsection (d)(2) does not render the application administratively incomplete.

(f) Prohibits the administrative law judge who conducts the hearing from granting party status to a person who failed to seek party status from TNRCC before the issue was referred to SOAH if TNRCC refers an issue regarding an application to SOAH for a hearing.

(g) Provides that in the event of a conflict between this section and any other law, this section prevails.

SECTION 3. (a) Requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules to implement the changes in law made by this Act as soon as practicable after the effective date of this Act.

(b) Provides that the changes in law made by this Act apply only to an application for a new or amended water right received by TCEQ on or after the effective date of the rules adopted under Subsection (a) of this section. Provides that an application received before the effective date of the rules adopted under Subsection (a) of this section is governed by the law in effect on the date the application was received, and the former law is continued in effect for that purpose.

(c) Authorizes the executive director of TCEQ, on notice to the applicant, beginning on the effective date of the rules adopted under Subsection (a) of this section, to extend the period for technical review of an application for a new or amended water right under Section 11.129, Water Code, as amended by this Act, by a period not to exceed 18 months from the date the rules take effect if:

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

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

(d) Requires the executive director of TCEQ to take all practicable measures to substantially meet all other applicable deadlines in Section 11.129, Water Code, as amended by this Act, related to the technical review of an application during an extension under Subsection (c) of this section.

SECTION 4. Effective date: upon passage or September 1, 2015.