

By: Dutton

H.B. No. 2154

A BILL TO BE ENTITLED

AN ACT

relating to the functions and operation of the State Office of Administrative Hearings.

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

SECTION 1. Section 2001.058, Government Code, is amended by adding Subsections (d-1) and (e-1) and amending Subsection (e) to read as follows:

(d-1) On making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under Section 2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.

(e) Except as provided by Subsection (e-1), a [A] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies

1 provided under Subsection (c), or prior administrative decisions;

2 (2) that a prior administrative decision on which the
3 administrative law judge relied is incorrect or should be changed;
4 or

5 (3) that a technical error in a finding of fact should
6 be changed.

7 The agency shall state in writing the specific reason and
8 legal basis for a change made under this subsection.

9 (e-1) Notwithstanding any other law, in a contested case
10 before the agency that concerns licensing in relation to an
11 occupational license, a state agency may not change a finding of
12 fact or conclusion of law or vacate or modify an order of the
13 administrative law judge. The state agency may obtain judicial
14 review of any finding of fact or conclusion of law issued by the
15 administrative law judge as provided by Subsection (f)(5). Except
16 as provided by Subsection (f), for each case, the state agency has
17 the sole authority and discretion to determine the appropriate
18 action or sanction, and the administrative law judge may not make
19 any recommendation regarding the appropriate action or sanction.

20 SECTION 2. Section 2003.023, Government Code, is amended to
21 read as follows:

22 Sec. 2003.023. SUNSET PROVISION. The State Office of
23 Administrative Hearings is subject to review under Chapter 325
24 (Texas Sunset Act), but is not abolished under that chapter. The
25 office shall be reviewed during the periods in which state agencies
26 abolished in 2027 [~~2015~~] and every 12th year after 2027 [~~2015~~] are
27 reviewed.

1 SECTION 3. Section 2003.024, Government Code, is amended by
2 amending Subsections (a), (a-2), (c), and (d) and adding Subsection
3 (a-3) to read as follows:

4 (a) If a state agency referred matters to the office during
5 any of the three most recent state fiscal years for which complete
6 information about the agency's hourly usage is available and the
7 costs to the office of conducting hearings and alternative dispute
8 resolution procedures for the state agency are not to be paid by
9 appropriations to the office during a state fiscal biennium, the
10 office and the agency shall enter into an interagency contract for
11 the biennium under which the referring agency pays the office
12 either a lump-sum amount~~[7]~~ at the start of each fiscal year of the
13 biennium or a fixed amount at the start of each fiscal quarter of
14 the biennium for all services provided to the agency~~[7, a lump-sum~~
15 ~~amount to cover the costs of conducting all hearings and~~
16 ~~procedures]~~ during the fiscal year. The office shall report to the
17 Legislative Budget Board any agency that fails to make a timely
18 payment under the contract. The lump-sum or quarterly amount paid
19 to the office under the contract must be based on:

20 (1) an hourly rate that is set by the office;
21 (A) in an amount that sufficiently covers the
22 office's full costs in providing services to the agency, including
23 costs for items listed in Subsection (c)(2); and

24 (B) in time for the rate to be reviewed by the
25 legislature, as part of the legislature's review of the office's
26 legislative appropriations request for the biennium, in
27 determining the office's legislative appropriations for the

1 biennium; and

2 (2) the anticipated hourly usage of the office's
3 services by the referring agency for each fiscal year of the
4 biennium, as estimated by the office under Subsection (a-1).

5 (a-2) The office, for a contract entered into as provided by
6 Subsection (a) under which a quarterly amount is paid by the
7 referring agency to the office, shall:

8 (1) track the agency's actual hourly usage of the
9 office's services during each fiscal quarter; and

10 (2) forecast, after each fiscal quarter, the agency's
11 anticipated hourly usage for the rest of the fiscal year.

12 (a-3) If a state agency did not refer matters to the office
13 during any of the three state fiscal years preceding a state fiscal
14 biennium for which complete information about the agency's hourly
15 usage would have been available and did not provide information to
16 the office sufficient for the office to reasonably and timely
17 estimate anticipated usage and enter into a contract with the
18 agency before the start of the state fiscal biennium, and the costs
19 to the office of conducting hearings and alternative dispute
20 resolution procedures for the state agency are not paid by
21 appropriations to the office for the state fiscal biennium, the
22 referring agency shall pay the office the costs of conducting
23 hearings or procedures for the agency based on the hourly rate that
24 is set by the office under Subsection (a) and on the agency's actual
25 usage of the office's services.

26 (c) Each state fiscal biennium, the office as part of its
27 legislative appropriation request shall file:

1 (1) information, as estimated under Subsection (a-1),
2 related to the anticipated hourly usage of each state agency that
3 refers matters to the office for which the costs of hearings and
4 alternative dispute resolution procedures are anticipated to be
5 paid by appropriations to the office; and

6 (2) an estimate of its hourly costs in conducting each
7 type of hearing or dispute resolution procedure [~~. The office shall~~
8 ~~estimate the hourly cost~~] based on the average cost per hour during
9 the preceding state fiscal year of:

10 (A) the salaries of its administrative law
11 judges;

12 (B) the travel expenses, hearing costs, and
13 telephone charges directly related to the conduct of a hearing or
14 procedure; and

15 (C) the administrative costs of the office,
16 including docketing costs [~~and the administrative costs of the~~
17 ~~division of the office that conducts the hearing or procedure~~].

18 (d) This section does not apply to hearings conducted:

19 (1) under Section 2003.047 or 2003.049 [~~by the natural~~
20 ~~resource conservation division or the utility division~~]; or

21 (2) under the administrative license revocation
22 program.

23 SECTION 4. Subchapter B, Chapter 2003, Government Code, is
24 amended by adding Section 2003.025 to read as follows:

25 Sec. 2003.025. REQUIRED INFORMATION REGARDING ANTICIPATED
26 HOURLY USAGE. (a) This section applies to a state agency that has
27 entered into a contract with the office for the conduct of hearings

1 and alternative dispute resolution procedures for the agency,
2 including a contract under Section 2003.024, 2003.048, 2003.049, or
3 2003.105, during any of the three most recent state fiscal years.

4 (b) On a date determined by the office before the beginning
5 of each state fiscal biennium, a state agency to which this section
6 applies shall submit to the office and the Legislative Budget Board
7 information regarding the agency's anticipated hourly usage of the
8 office's services for each fiscal year of that biennium.

9 SECTION 5. Section 2003.0421(c), Government Code, is
10 amended to read as follows:

11 (c) This section applies to any contested case hearing
12 conducted by the office, except hearings conducted on behalf of the
13 Texas [~~Natural Resource Conservation~~] Commission on Environmental
14 Quality or the Public Utility Commission of Texas which are
15 governed by Sections 2003.047 and 2003.049.

16 SECTION 6. The heading to Section 2003.047, Government
17 Code, is amended to read as follows:

18 Sec. 2003.047. HEARINGS FOR TEXAS COMMISSION ON
19 ENVIRONMENTAL QUALITY [~~NATURAL RESOURCE CONSERVATION DIVISION~~].

20 SECTION 7. Sections 2003.047(a), (b), and (c), Government
21 Code, are amended to read as follows:

22 (a) The office shall [~~establish a natural resource~~
23 ~~conservation division to~~] perform [the] contested case hearings for
24 the Texas [~~Natural Resource Conservation~~] Commission on
25 Environmental Quality.

26 (b) The office [~~division~~] shall conduct hearings relating
27 to contested cases before the commission, other than a hearing

1 conducted by one or more commissioners. The commission by rule may
2 delegate to the office [~~division~~] the responsibility to hear any
3 other matter before the commission if consistent with the
4 responsibilities of the office [~~division~~].

5 (c) [~~Only an administrative law judge in the division may~~
6 ~~conduct a hearing on behalf of the commission. An administrative~~
7 ~~law judge in the division may conduct hearings for other state~~
8 ~~agencies as time allows.] The office may [~~transfer an~~
9 ~~administrative law judge to the division on a permanent or~~
10 ~~temporary basis and may~~] contract with qualified individuals to
11 serve as temporary administrative law judges as necessary.~~

12 SECTION 8. Section 2003.048, Government Code, is amended to
13 read as follows:

14 Sec. 2003.048. TEXAS [~~NATURAL RESOURCE CONSERVATION~~]
15 COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. The office shall
16 charge the Texas [~~Natural Resource Conservation~~] Commission on
17 Environmental Quality a fixed annual fee rather than an hourly rate
18 for services rendered by the office to the commission. The amount
19 of the fee may not be less than the amount appropriated to the Texas
20 [~~Natural Resource Conservation~~] Commission on Environmental
21 Quality in the General Appropriations Act for payment to the office
22 [~~natural resource conservation division~~] to conduct commission
23 hearings. The amount of the fee shall be based on the costs of
24 conducting the hearings, the costs of travel expenses and telephone
25 charges directly related to the hearings, docketing costs, and
26 other applicable administrative costs of the office [~~including the~~
27 ~~administrative costs of the natural resource conservation~~

1 ~~division~~]. The office and the Texas [~~Natural Resource~~
2 ~~Conservation~~] Commission on Environmental Quality shall negotiate
3 the amount of the fixed fee biennially, subject to the approval of
4 the governor, to coincide with the commission's legislative
5 appropriations request.

6 SECTION 9. The heading to Section 2003.049, Government
7 Code, is amended to read as follows:

8 Sec. 2003.049. UTILITY HEARINGS [~~DIVISION~~].

9 SECTION 10. Sections 2003.049(a), (b), and (c), Government
10 Code, are amended to read as follows:

11 (a) The office shall [~~establish a utility division to~~
12 perform ~~the~~] contested case hearings for the Public Utility
13 Commission of Texas as prescribed by the Public Utility Regulatory
14 Act of 1995 and other applicable law.

15 (b) The office [~~utility division~~] shall conduct hearings
16 relating to contested cases before the commission, other than a
17 hearing conducted by one or more commissioners. The commission by
18 rule may delegate the responsibility to hear any other matter
19 before the commission if consistent with the duties and
20 responsibilities of the office [~~division~~].

21 (c) [~~Only an administrative law judge in the utility~~
22 ~~division may conduct a hearing on behalf of the commission. An~~
23 ~~administrative law judge in the utility division may conduct~~
24 ~~hearings for other state agencies as time allows.~~] The office may
25 [~~transfer an administrative law judge into the division on a~~
26 ~~temporary or permanent basis and may~~] contract with qualified
27 individuals to serve as temporary administrative law judges as

1 necessary.

2 SECTION 11. Section 2003.051, Government Code, is amended
3 to read as follows:

4 Sec. 2003.051. ROLE OF REFERRING AGENCY. (a) Except in
5 connection with interim appeals of orders or questions certified to
6 an agency by an administrative law judge, as permitted by law, a
7 state agency that has referred a matter to the office in which the
8 office will conduct a hearing may not take any adjudicative action
9 relating to the matter until the office has issued its proposal for
10 decision or otherwise concluded its involvement in the matter. The
11 state agency may exercise its advocacy rights in the matter before
12 the office in the same manner as any other party.

13 (b) If the office issues a proposal for decision in a matter
14 referred to the office by a state agency, the referring agency shall
15 send to the office an electronic copy of the agency's final decision
16 or order in the matter.

17 SECTION 12. The heading to Subchapter D, Chapter 2003,
18 Government Code, is amended to read as follows:

19 SUBCHAPTER D. TAX HEARINGS [~~DIVISION~~]

20 SECTION 13. The heading to Section 2003.101, Government
21 Code, is amended to read as follows:

22 Sec. 2003.101. TAX HEARINGS [~~DIVISION~~].

23 SECTION 14. Sections 2003.101(a), (b), (d), and (i),
24 Government Code, are amended to read as follows:

25 (a) The office shall [~~establish a tax division to~~] conduct
26 hearings relating to contested cases involving the collection,
27 receipt, administration, and enforcement of taxes, fees, and other

1 amounts as prescribed by Section [111.00455](#), Tax Code.

2 (b) An administrative law judge who presides at a [~~in the~~
3 tax hearing [~~division~~] is classified as a "master administrative
4 law judge II." Section [2003.0411](#) does not apply to this section.

5 (d) To be eligible to preside at a tax [~~division~~] hearing,
6 an administrative law judge, including a temporary administrative
7 law judge contracted with under Section [2003.043](#), must:

8 (1) be a United States citizen;

9 (2) be an attorney in good standing with the State Bar
10 of Texas;

11 (3) have been licensed in this state to practice law
12 for at least seven years; and

13 (4) have substantial experience in tax cases in making
14 the record suitable for administrative review [~~or otherwise, and~~

15 [~~(5) have devoted at least 75 percent of the person's~~
16 ~~legal practice to Texas state tax law in at least five of the past 10~~
17 ~~years before the date on which the person begins employment in the~~
18 ~~tax division]~~.

19 (i) For each hearing conducted under this section, an
20 administrative law judge [~~in the tax division~~] shall issue a
21 proposal for decision that includes findings of fact and
22 conclusions of law. In addition, the proposal for decision must
23 include the legal reasoning and other analysis considered by the
24 judge in reaching the decision. Each finding of fact or conclusion
25 of law made by the judge must be:

26 (1) independent and impartial; and

27 (2) based on state law and the evidence presented at

1 the hearing.

2 SECTION 15. Sections 2003.103(a) and (b), Government Code,
3 are amended to read as follows:

4 (a) The office [~~tax division~~] shall conduct all hearings
5 under this subchapter in a timely manner.

6 (b) The office [~~tax division~~] shall use every reasonable
7 means to expedite a case under this subchapter when the comptroller
8 requests that the office [~~division~~] expedite the case.

9 SECTION 16. The heading to Section 2003.104, Government
10 Code, is amended to read as follows:

11 Sec. 2003.104. CONFIDENTIALITY OF TAX HEARING [~~DIVISION~~]
12 INFORMATION.

13 SECTION 17. The heading to Section 2003.105, Government
14 Code, is amended to read as follows:

15 Sec. 2003.105. TAX [~~DIVISION~~] HEARINGS FEE.

16 SECTION 18. Section 2003.109, Government Code, is amended
17 to read as follows:

18 Sec. 2003.109. RULES; EARLY REFERRAL. (a) The comptroller
19 may adopt rules to provide for the referral to the office [~~tax~~
20 ~~division~~] of issues related to a case described by Section
21 111.00455, Tax Code, to resolve a procedural or other preliminary
22 dispute between the comptroller and a party.

23 (b) After a referral under this section, the office [~~tax~~
24 ~~division~~] shall docket the case and assign an administrative law
25 judge under Section 2003.101. If additional proceedings are
26 required after the consideration of the procedural or other
27 preliminary dispute, the office [~~tax division~~] shall appoint the

1 same administrative law judge to hear the case.

2 SECTION 19. The heading to Section 111.00455, Tax Code, is
3 amended to read as follows:

4 Sec. 111.00455. CONTESTED CASES CONDUCTED BY [~~TAX DIVISION~~
5 ~~OF~~] STATE OFFICE OF ADMINISTRATIVE HEARINGS.

6 SECTION 20. Sections 111.00455(a) and (c), Tax Code, are
7 amended to read as follows:

8 (a) The [~~tax division of the~~] State Office of Administrative
9 Hearings shall conduct any contested case hearing as provided by
10 Section 2003.101, Government Code, in relation to the collection,
11 receipt, administration, and enforcement of:

12 (1) a tax imposed under this title; and

13 (2) any other tax, fee, or other amount that the
14 comptroller is required to collect, receive, administer, or enforce
15 under a law not included in this title.

16 (c) A reference in law to the comptroller that relates to
17 the performance of a contested case hearing described by Subsection
18 (a) means the [~~tax division of the~~] State Office of Administrative
19 Hearings.

20 SECTION 21. Section 524.032(b), Transportation Code, is
21 amended to read as follows:

22 (b) A hearing shall be rescheduled if, before the fifth day
23 before the date scheduled for the hearing, [~~the department~~
24 ~~receives~~] a request for a continuance from the person who requested
25 the hearing is received in accordance with the memorandum of
26 understanding adopted under Section 524.033(c). Unless both
27 parties agree otherwise, the hearing shall be rescheduled for a

1 date not earlier than the fifth day after the date [~~the department~~
2 ~~receives~~] the request for [~~the~~] continuance is received.

3 SECTION 22. Section 524.033, Transportation Code, is
4 amended by adding Subsections (c) and (d) to read as follows:

5 (c) The department and chief administrative law judge of the
6 State Office of Administrative Hearings shall adopt and at least
7 biennially update a memorandum of understanding establishing that
8 the State Office of Administrative Hearings has primary scheduling
9 responsibility for a hearing under this subchapter. The memorandum
10 of understanding must, at a minimum:

11 (1) set out the roles and responsibilities of the
12 State Office of Administrative Hearings and the department in
13 scheduling a hearing under this subchapter, including which agency
14 is responsible for scheduling each stage of a hearing;

15 (2) ensure that the State Office of Administrative
16 Hearings and the department have timely access to scheduling and
17 continuance information; and

18 (3) provide for the transfer of funding for department
19 employees responsible for scheduling hearings under this
20 subchapter from the department to the State Office of
21 Administrative Hearings when the State Office of Administrative
22 Hearings assumes responsibility for initial scheduling of hearings
23 under this subchapter.

24 (d) The State Office of Administrative Hearings and the
25 department shall consult with the Department of Information
26 Resources and the Office of Court Administration of the Texas
27 Judicial System in developing any information technology solutions

1 needed to complete the transfer of scheduling responsibilities, as
2 outlined in the memorandum of understanding adopted under
3 Subsection (c).

4 SECTION 23. Section 14.052(a), Utilities Code, is amended
5 to read as follows:

6 (a) The commission shall adopt and enforce rules governing
7 practice and procedure before the commission and, as applicable,
8 practice and procedure before the [~~utility division of the~~] State
9 Office of Administrative Hearings.

10 SECTION 24. Sections 14.053(a) and (b), Utilities Code, are
11 amended to read as follows:

12 (a) The [~~utility division of the~~] State Office of
13 Administrative Hearings shall conduct each hearing in a contested
14 case that is not conducted by one or more commissioners.

15 (b) The commission may delegate to the [~~utility division of~~
16 ~~the~~] State Office of Administrative Hearings the authority to make
17 a final decision and to issue findings of fact, conclusions of law,
18 and other necessary orders in a proceeding in which there is not a
19 contested issue of fact or law.

20 SECTION 25. Sections 102.006(a), (b), (c), and (e),
21 Utilities Code, are amended to read as follows:

22 (a) The railroad commission by rule shall provide for
23 administrative hearings in contested cases to be conducted by one
24 or more members of the railroad commission, by railroad commission
25 hearings examiners, or by the [~~utility division of the~~] State
26 Office of Administrative Hearings. The rules must provide for a
27 railroad commission hearings examiner or the [~~utility division of~~

1 ~~the~~] State Office of Administrative Hearings to conduct each
2 hearing in a contested case that is not conducted by one or more
3 members of the railroad commission. A hearing must be conducted in
4 accordance with the rules and procedures adopted by the railroad
5 commission.

6 (b) The railroad commission may delegate to a railroad
7 commission hearings examiner or to the ~~[utility division of the]~~
8 State Office of Administrative Hearings the authority to make a
9 final decision and to issue findings of fact, conclusions of law,
10 and other necessary orders in a proceeding in which there is not a
11 contested issue of fact or law.

12 (c) The railroad commission by rule shall define the
13 procedures by which it delegates final decision-making authority
14 under Subsection (b) to a railroad commission hearings examiner or
15 to the ~~[utility division of the]~~ State Office of Administrative
16 Hearings.

17 (e) The State Office of Administrative Hearings shall
18 charge the railroad commission a fixed annual rate for hearings
19 conducted by the office under this section only if the legislature
20 appropriates money for that purpose. If the legislature does not
21 appropriate money for the payment of a fixed annual rate under this
22 section, the State Office of Administrative Hearings shall charge
23 the railroad commission an hourly rate set by the office under
24 Section 2003.024(a), Government Code, [of not more than \$90 per
25 hour] for hearings conducted by the office under this section.

26 SECTION 26. The following provisions of the Government Code
27 are repealed:

- 1 (1) Sections 2003.049(k) and (l);
- 2 (2) Section 2003.101(c);
- 3 (3) Section 2003.102;
- 4 (4) Section 2003.106; and
- 5 (5) Section 2003.107.

6 SECTION 27. (a) Section 2001.058(d-1), Government Code, as
7 added by this Act, applies only to a hearing conducted by the State
8 Office of Administrative Hearings on or after September 1, 2015.

9 (b) The State Office of Administrative Hearings shall
10 develop and submit a legislative appropriations request in
11 accordance with Section 2003.024, Government Code, as amended by
12 this Act, beginning with the office's legislative appropriations
13 request for the 2018-2019 state fiscal biennium.

14 (c) Section 2003.024, Government Code, as amended by this
15 Act, applies only to a contract entered into on or after the
16 effective date of this Act. A contract entered into before that
17 date is governed by the law in effect immediately before the
18 effective date of this Act, and the former law is continued in
19 effect for that purpose.

20 (d) Not later than September 1, 2016, the Department of
21 Public Safety and the chief administrative law judge of the State
22 Office of Administrative Hearings shall adopt an initial memorandum
23 of understanding under Section 524.033(c), Transportation Code, as
24 added by this Act.

25 SECTION 28. (a) Except as provided by Subsection (b) of this
26 section, this Act takes effect September 1, 2015.

27 (b) Section 524.032(b), Transportation Code, as amended by

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1 this Act, takes effect September 1, 2016.