

1-1 By: Dutton (Senate Sponsor - Birdwell) H.B. No. 2154
 1-2 (In the Senate - Received from the House April 29, 2015;
 1-3 April 30, 2015, read first time and referred to Committee on State
 1-4 Affairs; May 8, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; May 8, 2015, sent
 1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2154 By: Birdwell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the functions and operation of the State Office of
 1-22 Administrative Hearings.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 2001.058, Government Code, is amended by
 1-25 adding Subsection (d-1) to read as follows:

1-26 (d-1) On making a finding that a party to a contested case
 1-27 has defaulted under the rules of the State Office of Administrative
 1-28 Hearings, the administrative law judge may dismiss the case from
 1-29 the docket of the State Office of Administrative Hearings and
 1-30 remand it to the referring agency for informal disposition under
 1-31 Section 2001.056. After the case is dismissed and remanded, the
 1-32 agency may informally dispose of the case by applying its own rules
 1-33 or the procedural rules of the State Office of Administrative
 1-34 Hearings relating to default proceedings. This subsection does not
 1-35 apply to a contested case in which the administrative law judge is
 1-36 authorized to render a final decision.

1-37 SECTION 2. Section 2003.023, Government Code, is amended to
 1-38 read as follows:

1-39 Sec. 2003.023. SUNSET PROVISION. The State Office of
 1-40 Administrative Hearings is subject to review under Chapter 325
 1-41 (Texas Sunset Act), but is not abolished under that chapter. The
 1-42 office shall be reviewed during the periods in which state agencies
 1-43 abolished in 2027 [~~2015~~] and every 12th year after 2027 [~~2015~~] are
 1-44 reviewed.

1-45 SECTION 3. Section 2003.024, Government Code, is amended by
 1-46 amending Subsections (a), (a-2), (c), and (d) and adding Subsection
 1-47 (a-3) to read as follows:

1-48 (a) If a state agency referred matters to the office during
 1-49 any of the three most recent state fiscal years for which complete
 1-50 information about the agency's hourly usage is available and the
 1-51 costs to the office of conducting hearings and alternative dispute
 1-52 resolution procedures for the state agency are not to be paid by
 1-53 appropriations to the office during a state fiscal biennium, the
 1-54 office and the agency shall enter into an interagency contract for
 1-55 the biennium under which the referring agency pays the office
 1-56 either a lump-sum amount[7] at the start of each fiscal year of the
 1-57 biennium or a fixed amount at the start of each fiscal quarter of
 1-58 the biennium for all services provided to the agency[7, a lump-sum
 1-59 amount to cover the costs of conducting all hearings and
 1-60 procedures] during the fiscal year. The office shall report to the

2-1 Legislative Budget Board any agency that fails to make a timely
 2-2 payment under the contract. The lump-sum or quarterly amount paid
 2-3 to the office under the contract must be based on:

2-4 (1) an hourly rate that is set by the office:

2-5 (A) in an amount that sufficiently covers the
 2-6 office's full costs in providing services to the agency, including
 2-7 costs for items listed in Subsection (c)(2); and

2-8 (B) in time for the rate to be reviewed by the
 2-9 legislature, as part of the legislature's review of the office's
 2-10 legislative appropriations request for the biennium, in
 2-11 determining the office's legislative appropriations for the
 2-12 biennium; and

2-13 (2) the anticipated hourly usage of the office's
 2-14 services by the referring agency for each fiscal year of the
 2-15 biennium, as estimated by the office under Subsection (a-1).

2-16 (a-2) The office, for a contract entered into as provided by
 2-17 Subsection (a) under which a quarterly amount is paid by the
 2-18 referring agency to the office, shall:

2-19 (1) track the agency's actual hourly usage of the
 2-20 office's services during each fiscal quarter; and

2-21 (2) forecast, after each fiscal quarter, the agency's
 2-22 anticipated hourly usage for the rest of the fiscal year.

2-23 (a-3) If a state agency did not refer matters to the office
 2-24 during any of the three state fiscal years preceding a state fiscal
 2-25 biennium for which complete information about the agency's hourly
 2-26 usage would have been available and did not provide information to
 2-27 the office sufficient for the office to reasonably and timely
 2-28 estimate anticipated usage and enter into a contract with the
 2-29 agency before the start of the state fiscal biennium, and the costs
 2-30 to the office of conducting hearings and alternative dispute
 2-31 resolution procedures for the state agency are not paid by
 2-32 appropriations to the office for the state fiscal biennium, the
 2-33 referring agency shall pay the office the costs of conducting
 2-34 hearings or procedures for the agency based on the hourly rate that
 2-35 is set by the office under Subsection (a) and on the agency's actual
 2-36 usage of the office's services.

2-37 (c) Each state fiscal biennium, the office as part of its
 2-38 legislative appropriation request shall file:

2-39 (1) information, as estimated under Subsection (a-1),
 2-40 related to the anticipated hourly usage of each state agency that
 2-41 refers matters to the office for which the costs of hearings and
 2-42 alternative dispute resolution procedures are anticipated to be
 2-43 paid by appropriations to the office; and

2-44 (2) an estimate of its hourly costs in conducting each
 2-45 type of hearing or dispute resolution procedure [~~. The office shall~~
 2-46 ~~estimate the hourly cost~~] based on the average cost per hour during
 2-47 the preceding state fiscal year of:

2-48 (A) the salaries of its administrative law
 2-49 judges;

2-50 (B) the travel expenses, hearing costs, and
 2-51 telephone charges directly related to the conduct of a hearing or
 2-52 procedure; and

2-53 (C) the administrative costs of the office,
 2-54 including docketing costs [~~and the administrative costs of the~~
 2-55 ~~division of the office that conducts the hearing or procedure~~].

2-56 (d) This section does not apply to hearings conducted:

2-57 (1) under Section 2003.047 or 2003.049 [~~by the natural~~
 2-58 ~~resource conservation division or the utility division~~]; or

2-59 (2) under the administrative license revocation
 2-60 program.

2-61 SECTION 4. Subchapter B, Chapter 2003, Government Code, is
 2-62 amended by adding Section 2003.025 to read as follows:

2-63 Sec. 2003.025. REQUIRED INFORMATION REGARDING ANTICIPATED
 2-64 HOURLY USAGE. (a) This section applies to a state agency that has
 2-65 entered into a contract with the office for the conduct of hearings
 2-66 and alternative dispute resolution procedures for the agency,
 2-67 including a contract under Section 2003.024, 2003.048, 2003.049, or
 2-68 2003.105, during any of the three most recent state fiscal years.

2-69 (b) On a date determined by the office before the beginning

3-1 of each state fiscal biennium, a state agency to which this section
 3-2 applies shall submit to the office and the Legislative Budget Board
 3-3 information regarding the agency's anticipated hourly usage of the
 3-4 office's services for each fiscal year of that biennium.

3-5 SECTION 5. Section 2003.0421(c), Government Code, is
 3-6 amended to read as follows:

3-7 (c) This section applies to any contested case hearing
 3-8 conducted by the office, except hearings conducted on behalf of the
 3-9 Texas [~~Natural Resource Conservation~~] Commission on Environmental
 3-10 Quality or the Public Utility Commission of Texas which are
 3-11 governed by Sections 2003.047 and 2003.049.

3-12 SECTION 6. The heading to Section 2003.047, Government
 3-13 Code, is amended to read as follows:

3-14 Sec. 2003.047. HEARINGS FOR TEXAS COMMISSION ON
 3-15 ENVIRONMENTAL QUALITY [~~NATURAL RESOURCE CONSERVATION DIVISION~~].

3-16 SECTION 7. Sections 2003.047(a), (b), and (c), Government
 3-17 Code, are amended to read as follows:

3-18 (a) The office shall [~~establish a natural resource~~
 3-19 ~~conservation division to~~] perform [~~the~~] contested case hearings for
 3-20 the Texas [~~Natural Resource Conservation~~] Commission on
 3-21 Environmental Quality.

3-22 (b) The office [~~division~~] shall conduct hearings relating
 3-23 to contested cases before the commission, other than a hearing
 3-24 conducted by one or more commissioners. The commission by rule may
 3-25 delegate to the office [~~division~~] the responsibility to hear any
 3-26 other matter before the commission if consistent with the
 3-27 responsibilities of the office [~~division~~].

3-28 (c) [~~Only an administrative law judge in the division may~~
 3-29 ~~conduct a hearing on behalf of the commission. An administrative~~
 3-30 ~~law judge in the division may conduct hearings for other state~~
 3-31 ~~agencies as time allows.]~~ The office may [~~transfer an~~
 3-32 ~~administrative law judge to the division on a permanent or~~
 3-33 ~~temporary basis and may~~] contract with qualified individuals to
 3-34 serve as temporary administrative law judges as necessary.

3-35 SECTION 8. Section 2003.048, Government Code, is amended to
 3-36 read as follows:

3-37 Sec. 2003.048. TEXAS [~~NATURAL RESOURCE CONSERVATION~~]
 3-38 COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. The office shall
 3-39 charge the Texas [~~Natural Resource Conservation~~] Commission on
 3-40 Environmental Quality a fixed annual fee rather than an hourly rate
 3-41 for services rendered by the office to the commission. The amount
 3-42 of the fee may not be less than the amount appropriated to the Texas
 3-43 [~~Natural Resource Conservation~~] Commission on Environmental
 3-44 Quality in the General Appropriations Act for payment to the office
 3-45 [~~natural resource conservation division~~] to conduct commission
 3-46 hearings. The amount of the fee shall be based on the costs of
 3-47 conducting the hearings, the costs of travel expenses and telephone
 3-48 charges directly related to the hearings, docketing costs, and
 3-49 other applicable administrative costs of the office [~~including the~~
 3-50 ~~administrative costs of the natural resource conservation~~
 3-51 ~~division~~]. The office and the Texas [~~Natural Resource~~
 3-52 ~~Conservation~~] Commission on Environmental Quality shall negotiate
 3-53 the amount of the fixed fee biennially, subject to the approval of
 3-54 the governor, to coincide with the commission's legislative
 3-55 appropriations request.

3-56 SECTION 9. The heading to Section 2003.049, Government
 3-57 Code, is amended to read as follows:

3-58 Sec. 2003.049. UTILITY HEARINGS [~~DIVISION~~].

3-59 SECTION 10. Sections 2003.049(a), (b), and (c), Government
 3-60 Code, are amended to read as follows:

3-61 (a) The office shall [~~establish a utility division to~~
 3-62 perform [~~the~~] contested case hearings for the Public Utility
 3-63 Commission of Texas as prescribed by the Public Utility Regulatory
 3-64 Act of 1995 and other applicable law.

3-65 (b) The office [~~utility division~~] shall conduct hearings
 3-66 relating to contested cases before the commission, other than a
 3-67 hearing conducted by one or more commissioners. The commission by
 3-68 rule may delegate the responsibility to hear any other matter
 3-69 before the commission if consistent with the duties and

4-1 responsibilities of the office ~~[division]~~.

4-2 (c) ~~[Only an administrative law judge in the utility~~
 4-3 ~~division may conduct a hearing on behalf of the commission. An~~
 4-4 ~~administrative law judge in the utility division may conduct~~
 4-5 ~~hearings for other state agencies as time allows.]~~ The office may
 4-6 ~~[transfer an administrative law judge into the division on a~~
 4-7 ~~temporary or permanent basis and may]~~ contract with qualified
 4-8 individuals to serve as temporary administrative law judges as
 4-9 necessary.

4-10 SECTION 11. Section 2003.051, Government Code, is amended
 4-11 to read as follows:

4-12 Sec. 2003.051. ROLE OF REFERRING AGENCY. (a) Except in
 4-13 connection with interim appeals of orders or questions certified to
 4-14 an agency by an administrative law judge, as permitted by law, a
 4-15 state agency that has referred a matter to the office in which the
 4-16 office will conduct a hearing may not take any adjudicative action
 4-17 relating to the matter until the office has issued its proposal for
 4-18 decision or otherwise concluded its involvement in the matter. The
 4-19 state agency may exercise its advocacy rights in the matter before
 4-20 the office in the same manner as any other party.

4-21 (b) If the office issues a proposal for decision in a matter
 4-22 referred to the office by a state agency, the referring agency shall
 4-23 send to the office an electronic copy of the agency's final decision
 4-24 or order in the matter.

4-25 SECTION 12. The heading to Subchapter D, Chapter 2003,
 4-26 Government Code, is amended to read as follows:

4-27 SUBCHAPTER D. TAX HEARINGS ~~[DIVISION]~~

4-28 SECTION 13. The heading to Section 2003.101, Government
 4-29 Code, is amended to read as follows:

4-30 Sec. 2003.101. TAX HEARINGS ~~[DIVISION]~~.

4-31 SECTION 14. Sections 2003.101(a), (b), (d), and (i),
 4-32 Government Code, are amended to read as follows:

4-33 (a) The office shall ~~[establish a tax division to]~~ conduct
 4-34 hearings relating to contested cases involving the collection,
 4-35 receipt, administration, and enforcement of taxes, fees, and other
 4-36 amounts as prescribed by Section 111.00455, Tax Code.

4-37 (b) An administrative law judge who presides at a [in the]
 4-38 tax hearing [division] is classified as a "master administrative
 4-39 law judge II." Section 2003.0411 does not apply to this section.

4-40 (d) To be eligible to preside at a tax ~~[division]~~ hearing,
 4-41 an administrative law judge, including a temporary administrative
 4-42 law judge contracted with under Section 2003.043, must:

4-43 (1) be a United States citizen;
 4-44 (2) be an attorney in good standing with the State Bar
 4-45 of Texas;

4-46 (3) have been licensed in this state to practice law
 4-47 for at least seven years; and

4-48 (4) have substantial experience in tax cases in making
 4-49 the record suitable for administrative review ~~[or otherwise, and~~

4-50 ~~[(5) have devoted at least 75 percent of the person's~~
 4-51 ~~legal practice to Texas state tax law in at least five of the past 10~~
 4-52 ~~years before the date on which the person begins employment in the~~
 4-53 ~~tax division].~~

4-54 (i) For each hearing conducted under this section, an
 4-55 administrative law judge ~~[in the tax division]~~ shall issue a
 4-56 proposal for decision that includes findings of fact and
 4-57 conclusions of law. In addition, the proposal for decision must
 4-58 include the legal reasoning and other analysis considered by the
 4-59 judge in reaching the decision. Each finding of fact or conclusion
 4-60 of law made by the judge must be:

4-61 (1) independent and impartial; and
 4-62 (2) based on state law and the evidence presented at
 4-63 the hearing.

4-64 SECTION 15. Sections 2003.103(a) and (b), Government Code,
 4-65 are amended to read as follows:

4-66 (a) The office [tax division] shall conduct all hearings
 4-67 under this subchapter in a timely manner.

4-68 (b) The office [tax division] shall use every reasonable
 4-69 means to expedite a case under this subchapter when the comptroller

5-1 requests that the office [~~division~~] expedite the case.

5-2 SECTION 16. The heading to Section 2003.104, Government
5-3 Code, is amended to read as follows:

5-4 Sec. 2003.104. CONFIDENTIALITY OF TAX HEARING [~~DIVISION~~]
5-5 INFORMATION.

5-6 SECTION 17. The heading to Section 2003.105, Government
5-7 Code, is amended to read as follows:

5-8 Sec. 2003.105. TAX [~~DIVISION~~] HEARINGS FEE.

5-9 SECTION 18. Section 2003.109, Government Code, is amended
5-10 to read as follows:

5-11 Sec. 2003.109. RULES; EARLY REFERRAL. (a) The comptroller
5-12 may adopt rules to provide for the referral to the office [~~tax~~
5-13 ~~division~~] of issues related to a case described by Section
5-14 111.00455, Tax Code, to resolve a procedural or other preliminary
5-15 dispute between the comptroller and a party.

5-16 (b) After a referral under this section, the office [~~tax~~
5-17 ~~division~~] shall docket the case and assign an administrative law
5-18 judge under Section 2003.101. If additional proceedings are
5-19 required after the consideration of the procedural or other
5-20 preliminary dispute, the office [~~tax division~~] shall appoint the
5-21 same administrative law judge to hear the case.

5-22 SECTION 19. The heading to Section 111.00455, Tax Code, is
5-23 amended to read as follows:

5-24 Sec. 111.00455. CONTESTED CASES CONDUCTED BY [~~TAX DIVISION~~
5-25 ~~OF~~] STATE OFFICE OF ADMINISTRATIVE HEARINGS.

5-26 SECTION 20. Sections 111.00455(a) and (c), Tax Code, are
5-27 amended to read as follows:

5-28 (a) The [~~tax division of the~~] State Office of Administrative
5-29 Hearings shall conduct any contested case hearing as provided by
5-30 Section 2003.101, Government Code, in relation to the collection,
5-31 receipt, administration, and enforcement of:

5-32 (1) a tax imposed under this title; and
5-33 (2) any other tax, fee, or other amount that the
5-34 comptroller is required to collect, receive, administer, or enforce
5-35 under a law not included in this title.

5-36 (c) A reference in law to the comptroller that relates to
5-37 the performance of a contested case hearing described by Subsection
5-38 (a) means the [~~tax division of the~~] State Office of Administrative
5-39 Hearings.

5-40 SECTION 21. Section 524.032(b), Transportation Code, is
5-41 amended to read as follows:

5-42 (b) A hearing shall be rescheduled if, before the fifth day
5-43 before the date scheduled for the hearing, [~~the department~~
5-44 ~~receives~~] a request for a continuance from the person who requested
5-45 the hearing is received in accordance with the memorandum of
5-46 understanding adopted under Section 524.033(c). Unless both
5-47 parties agree otherwise, the hearing shall be rescheduled for a
5-48 date not earlier than the fifth day after the date [~~the department~~
5-49 ~~receives~~] the request for [~~the~~] continuance is received.

5-50 SECTION 22. Section 524.033, Transportation Code, is
5-51 amended by adding Subsections (c) and (d) to read as follows:

5-52 (c) The department and chief administrative law judge of the
5-53 State Office of Administrative Hearings shall adopt and at least
5-54 biennially update a memorandum of understanding establishing that
5-55 the State Office of Administrative Hearings has primary scheduling
5-56 responsibility for a hearing under this subchapter. The memorandum
5-57 of understanding must, at a minimum:

5-58 (1) set out the roles and responsibilities of the
5-59 State Office of Administrative Hearings and the department in
5-60 scheduling a hearing under this subchapter, including which agency
5-61 is responsible for scheduling each stage of a hearing;

5-62 (2) ensure that the State Office of Administrative
5-63 Hearings and the department have timely access to scheduling and
5-64 continuance information; and

5-65 (3) provide for the transfer of funding for department
5-66 employees responsible for scheduling hearings under this
5-67 subchapter from the department to the State Office of
5-68 Administrative Hearings when the State Office of Administrative
5-69 Hearings assumes responsibility for initial scheduling of hearings

6-1 under this subchapter.

6-2 (d) The State Office of Administrative Hearings and the
 6-3 department shall consult with the Department of Information
 6-4 Resources and the Office of Court Administration of the Texas
 6-5 Judicial System in developing any information technology solutions
 6-6 needed to complete the transfer of scheduling responsibilities, as
 6-7 outlined in the memorandum of understanding adopted under
 6-8 Subsection (c).

6-9 SECTION 23. Section 14.052(a), Utilities Code, is amended
 6-10 to read as follows:

6-11 (a) The commission shall adopt and enforce rules governing
 6-12 practice and procedure before the commission and, as applicable,
 6-13 practice and procedure before the [~~utility division of the~~] State
 6-14 Office of Administrative Hearings.

6-15 SECTION 24. Sections 14.053(a) and (b), Utilities Code, are
 6-16 amended to read as follows:

6-17 (a) The [~~utility division of the~~] State Office of
 6-18 Administrative Hearings shall conduct each hearing in a contested
 6-19 case that is not conducted by one or more commissioners.

6-20 (b) The commission may delegate to the [~~utility division of~~
 6-21 ~~the~~] State Office of Administrative Hearings the authority to make
 6-22 a final decision and to issue findings of fact, conclusions of law,
 6-23 and other necessary orders in a proceeding in which there is not a
 6-24 contested issue of fact or law.

6-25 SECTION 25. Sections 102.006(a), (b), (c), and (e),
 6-26 Utilities Code, are amended to read as follows:

6-27 (a) The railroad commission by rule shall provide for
 6-28 administrative hearings in contested cases to be conducted by one
 6-29 or more members of the railroad commission, by railroad commission
 6-30 hearings examiners, or by the [~~utility division of the~~] State
 6-31 Office of Administrative Hearings. The rules must provide for a
 6-32 railroad commission hearings examiner or the [~~utility division of~~
 6-33 ~~the~~] State Office of Administrative Hearings to conduct each
 6-34 hearing in a contested case that is not conducted by one or more
 6-35 members of the railroad commission. A hearing must be conducted in
 6-36 accordance with the rules and procedures adopted by the railroad
 6-37 commission.

6-38 (b) The railroad commission may delegate to a railroad
 6-39 commission hearings examiner or to the [~~utility division of the~~]
 6-40 State Office of Administrative Hearings the authority to make a
 6-41 final decision and to issue findings of fact, conclusions of law,
 6-42 and other necessary orders in a proceeding in which there is not a
 6-43 contested issue of fact or law.

6-44 (c) The railroad commission by rule shall define the
 6-45 procedures by which it delegates final decision-making authority
 6-46 under Subsection (b) to a railroad commission hearings examiner or
 6-47 to the [~~utility division of the~~] State Office of Administrative
 6-48 Hearings.

6-49 (e) The State Office of Administrative Hearings shall
 6-50 charge the railroad commission a fixed annual rate for hearings
 6-51 conducted by the office under this section only if the legislature
 6-52 appropriates money for that purpose. If the legislature does not
 6-53 appropriate money for the payment of a fixed annual rate under this
 6-54 section, the State Office of Administrative Hearings shall charge
 6-55 the railroad commission an hourly rate set by the office under
 6-56 Section 2003.024(a), Government Code, [of not more than \$90 per
 6-57 hour] for hearings conducted by the office under this section.

6-58 SECTION 26. The following provisions of the Government Code
 6-59 are repealed:

- 6-60 (1) Sections 2003.049(k) and (l);
- 6-61 (2) Section 2003.101(c);
- 6-62 (3) Section 2003.102;
- 6-63 (4) Section 2003.106; and
- 6-64 (5) Section 2003.107.

6-65 SECTION 27. (a) Section 2001.058(d-1), Government Code, as
 6-66 added by this Act, applies only to a hearing conducted by the State
 6-67 Office of Administrative Hearings on or after September 1, 2015.

6-68 (b) The State Office of Administrative Hearings shall
 6-69 develop and submit a legislative appropriations request in

7-1 accordance with Section 2003.024, Government Code, as amended by
7-2 this Act, beginning with the office's legislative appropriations
7-3 request for the 2018-2019 state fiscal biennium.

7-4 (c) Section 2003.024, Government Code, as amended by this
7-5 Act, applies only to a contract entered into on or after the
7-6 effective date of this Act. A contract entered into before that
7-7 date is governed by the law in effect immediately before the
7-8 effective date of this Act, and the former law is continued in
7-9 effect for that purpose.

7-10 (d) Not later than September 1, 2016, the Department of
7-11 Public Safety and the chief administrative law judge of the State
7-12 Office of Administrative Hearings shall adopt an initial memorandum
7-13 of understanding under Section 524.033(c), Transportation Code, as
7-14 added by this Act.

7-15 SECTION 28. (a) Except as provided by Subsection (b) of this
7-16 section, this Act takes effect September 1, 2015.

7-17 (b) Section 524.032(b), Transportation Code, as amended by
7-18 this Act, takes effect September 1, 2016.

7-19

* * * * *