

By: Ashby

H.B. No. 3821

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 expedite an  
3 applicant's appeal of such a decision, review the application and  
4 related documents, rule on the issues presented at the hearing, and  
5 issue an order:

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

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

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

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

20 (h) Once the executive director determines that an  
21 application is administratively complete:

22 (1) the commission may not revoke the determination  
23 that the application is administratively complete;

24 (2) the executive director may request additional  
25 information from the applicant only if the information is necessary  
26 to clarify, modify, or supplement previously submitted  
27 information; and

1           (3) a request for additional information does not  
2 render the application incomplete.

3           (i) After the executive director or the commission  
4 determines that the application is administratively complete, the  
5 executive director shall conduct a technical review of the  
6 application. As part of the review, the executive director shall  
7 determine whether the applicable water conservation, drought  
8 contingency, and water management plans under Sections [11.1271](#),  
9 [11.1272](#), and [11.1273](#) are adequate.

10           (j) Not later than the 180th day after the date on which the  
11 technical review begins, the executive director shall provide the  
12 applicant with:

13           (1) written notice that the technical review is  
14 complete, a draft permit, a draft notice, and technical memoranda  
15 associated with the application; or

16           (2) a written request for technical information as  
17 determined by the executive director to be necessary for the  
18 completion of the technical review.

19           (k) With notice to the applicant, the executive director may  
20 extend the deadline provided by Subsection (j) for a period of 30  
21 days. The executive director may not extend the deadline more than  
22 three times.

23           (l) Not later than the 60th day after the date the applicant  
24 receives a request under Subsection (j)(2), the applicant must  
25 provide the requested information to the executive director.

26           (m) The applicant may request an extension of the time to  
27 submit a response to a request under Subsection (j)(2). The

1 executive director shall grant the request if the applicant  
2 demonstrates good cause for the extension. An extension under this  
3 subsection extends the deadline provided by Subsection (o) by the  
4 same amount of time as the amount of the extension.

5 (n) Not later than the 60th day after the date the executive  
6 director receives a timely response to a request under Subsection  
7 (j)(2), the executive director shall review the response and  
8 provide the applicant with:

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

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

14 (o) If the executive director provides notice under  
15 Subsection (n)(2), the executive director and the applicant must  
16 collaborate in a good faith effort to resolve the deficiency. Not  
17 later than the 180th day after the date the executive director  
18 provides such notice, the executive director shall:

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

22 (2) return the application and the use fee and the  
23 unused portion of the notice fee as prescribed by commission rule to  
24 the applicant and provide the applicant with a list of the  
25 deficiencies with the application.

26 (p) The applicant is entitled to appeal the return of the  
27 application and dispute an application deficiency in a hearing

1 before the commission. The commission shall expedite an  
2 applicant's appeal of such a decision, review the application and  
3 related documents, rule on the issues presented at the hearing, and  
4 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 commission; or

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

13 (q) If the commission requests additional information from  
14 the applicant under Subsection (p)(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 (p)(1) or (3), as applicable.

19 (r) The applicant may request an extension of the time to  
20 submit a response to a request under Subsection (p)(2). The  
21 commission shall grant the request if the applicant demonstrates  
22 good cause for the extension. An extension under this subsection  
23 extends the deadline provided by Subsection (q) by the same amount  
24 of time as the amount of the extension.

25 (s) Not later than the 14th day after the date the applicant  
26 receives the draft permit, draft notice, and technical memoranda  
27 associated with the application, the applicant must provide the

1 executive director with:

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

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

6 (t) The applicant may request an extension of the time to  
7 submit comments under Subsection (s)(1). The commission shall  
8 grant the request if the applicant demonstrates good cause for the  
9 extension. An extension under this subsection extends the deadline  
10 provided by Subsection (s) by the same amount of time as the amount  
11 of the extension.

12 (u) The executive director shall file the draft permit,  
13 draft notice, and technical memoranda associated with the  
14 application with the chief clerk of the commission:

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

19 (2) immediately on receipt of a statement described by  
20 Subsection (s)(2).

21 (v) Notwithstanding any other provision of this section, if  
22 the executive director makes a written determination that notice is  
23 not required for an application, the executive director shall grant  
24 or deny the permit for which the application is filed not later than  
25 the 300th day after the date the executive director receives the  
26 application. This period shall be extended by the same amount of  
27 time as the amount of any extension of time granted to the applicant

1 for the provision of information [~~The commission shall determine~~  
2 ~~whether the application, maps, and other materials comply with the~~  
3 ~~requirements of this chapter and the rules of the commission. The~~  
4 ~~commission may require amendment of the application, maps, or other~~  
5 ~~materials to achieve necessary compliance~~].

6 SECTION 2. Subchapter D, Chapter 11, Water Code, is amended  
7 by adding Section 11.1291 to read as follows:

8 Sec. 11.1291. TECHNICAL REVIEW OF APPLICATIONS

9 (a) Within 30 days of the written request of an applicant,  
10 and following the declaration that an application is  
11 administratively complete, the executive director may delegate  
12 responsibilities for the technical review of the application to a  
13 third-party contractor who will:

14 (1) follow the direction of the executive director in  
15 conducting the technical review of the application and preparing  
16 all technical memoranda required by the executive director to  
17 reflect the analyses and conclusions developed as part of the  
18 technical review; and

19 (2) be responsible for successfully completing the  
20 technical review on behalf of the executive director.

21 (b) The executive director shall evaluate the principals  
22 and all subcontractors to be involved in a technical review  
23 conducted under this section for their experience in the areas to be  
24 addressed during and as part of the technical review, and shall  
25 secure the applicant's written consent before technical review may  
26 commence if such review will not be conducted by the executive  
27 director.



1       (c) If the executive director chooses to utilize a  
2 third-party contractor to complete the technical review of an  
3 application, the executive director shall:

4           (1) take all necessary measures to ensure that the  
5 third-party contractor, its principals, and its subcontractors  
6 have no financial or economic interest in the outcome of the  
7 application that is to be the subject of the technical review; and

8           (2) provide the applicant with a written statement of  
9 the basis for the executive director's selection of the third-party  
10 contractor for the technical review, including a description of the  
11 third-party contractor's demonstrated competency in the fields of  
12 expertise required for the technical review.

13       (d) The technical review of an application under this  
14 section shall be completed so that the executive director issues a  
15 draft permit or a draft permit amendment and associated technical  
16 memoranda within 180 days following the date the executive director  
17 determines that the applicant may complete the technical review or  
18 the applicant contracts with the third-party contractor.

19       (e) The period of technical review provided in this  
20 subsection is exclusive of the time provided for an applicant's  
21 responses to requests for information.

22       (f) For good cause demonstrated to the executive director,  
23 an applicant may be granted no more than 90 days to respond to any  
24 request for information.

25       (g) If an applicant requires additional time to respond to a  
26 request for information during technical review beyond 30 days from  
27 the date of applicant's receipt of the request, the time provided to

1 the executive director in this subsection to issue a draft permit or  
2 draft permit amendment and associated technical memoranda shall be  
3 extended by the number of days beyond 30 days that the applicant  
4 requires to respond to the request.

5 (h) Upon receipt of the applicant's consent to the use of a  
6 third-party contractor to conduct the technical review of an  
7 application, the executive director shall require the applicant to:

8 (1) enter into a contract with the third-party  
9 contractor that is consistent with this section and that expresses  
10 the scope of work to be undertaken by the third-party contractor  
11 during the technical review; and

12 (2) pay the third-party contractor for all services  
13 rendered under the contract as and when they are performed.

14 (i) If the applicant does not consent to the use of the  
15 third-party contractor under subsection (b), then the application  
16 shall be reviewed by the executive director.

17 SECTION 3. Section 11.133, Water Code, is amended to read as  
18 follows:

19 Sec. 11.133. HEARING. (a) At the time and place stated in  
20 the notice, the commission shall hold a hearing on the application.  
21 Any person may appear at the hearing in person or by attorney or may  
22 enter an [~~his~~] appearance in writing. Any person who appears may  
23 present objection to the issuance of the permit. The commission may  
24 receive evidence, orally or by affidavit, in support of or in  
25 opposition to the issuance of the permit, and it may hear arguments.

26 (b) The commission may not refer an application filed under  
27 this chapter to the State Office of Administrative Hearings for

1 consideration unless the commission first determines that:

2 (1) an issue relating to the commission's jurisdiction  
3 has been specifically identified in a timely filed request for a  
4 contested case hearing on the application;

5 (2) such request includes supporting documentation  
6 and evidence reflecting the interest the requestor asserts is  
7 justiciable by the commission at the time of the request; and

8 (3) the identified issue is one the commission has the  
9 authority to address under the statutes that govern the  
10 commission's consideration of the application.

11 (c) If the commission grants a request for a contested case  
12 hearing on an application submitted under this chapter, the  
13 commission shall:

14 (1) issue an order identifying the number and scope of  
15 issues to be referred to the State Office of Administrative  
16 Hearings for a hearing; and

17 (2) specify the maximum expected duration of the  
18 hearing, which may not exceed a period of 270 days from the date of  
19 the issuance of the commission's order under this subsection until  
20 the issuance of the proposal for decision.

21 (d) If the commission refers an issue regarding an  
22 application to the State Office of Administrative Hearings for a  
23 contested case hearing, the administrative law judge who conducts  
24 the hearing may not grant party status to a person who failed to  
25 timely seek party status from the commission before the issue was  
26 referred or to any person who was considered by the commission but  
27 was not determined to be a person affected by the commission's

1 action on the application.

2 (e) In the event of a conflict between this section and any  
3 other law, this section prevails.

4 SECTION 4. Subchapter D, Chapter 11, Water Code, is amended  
5 by adding Section 11.1331 to read as follows:

6 Sec. 11.1331. PARTICIPATION BY PUBLIC INTEREST COUNSEL.

7 (a) The public interest counsel may be named a party to a hearing on  
8 an application submitted under this chapter only if:

9 (1) during the period the commission may receive and  
10 consider requests for a contested case hearing on the application,  
11 the office of public interest counsel files with the commission a  
12 description of each public interest as established by Section 5.276  
13 that the office of public interest counsel believes:

14 (A) is affected by the application; and

15 (B) has not been adequately addressed by the  
16 executive director or the applicant during technical review;

17 (2) the commission in its discretion determines that  
18 the office of public interest counsel has described a public  
19 interest affected by the application that warrants participation by  
20 the public interest counsel as a party, and that will not be  
21 adequately addressed by any other party to the contested case  
22 hearing; and

23 (3) the commission includes in an order issued  
24 pursuant to section 11.133(c) one or more specified public interest  
25 issues described by the public interest counsel pursuant to  
26 subsection (a).

27 (b) If the commission names the office of public interest

1 counsel as a party to a contested case hearing on an application  
2 submitted under this chapter, the public interest counsel's  
3 participation shall be limited to examining only those public  
4 interest issues identified in the commission's order issued under  
5 section 11.133(c).

6 (c) The office of public interest counsel may not:

7 (1) submit responses to any requests for a contested  
8 case hearing on an application submitted under this chapter; or

9 (2) provide assistance to any party to a contested  
10 case hearing.

11 (d) A filing made by the public interest counsel under  
12 subsection (a) of this section is insufficient to refer any issue of  
13 an application to the State Office of Administrative Hearings for a  
14 contested case hearing.

15 (e) Subsection (d) does not limit any authority of the  
16 commission or executive director provided by other law to refer an  
17 application to the State Office of Administrative Hearings for a  
18 contested case hearing.

19 SECTION 5. (a) As soon as practicable after the effective  
20 date of this Act, the Texas Commission on Environmental Quality  
21 shall adopt rules to implement the changes in law made by this Act.

22 (b) The changes made to Section 11.133 and 11.1331 shall be  
23 effective for any notice of an application considered by the  
24 commission following the effective date of this Act. The changes  
25 made to Sections 11.129 and 11.1291 shall be effective to any  
26 application filed after the effective date of this Act.

27 (c) On notice to the applicant, beginning on the effective

1 date of the rules adopted under Subsection (a) of this section, the  
2 executive director of the Texas Commission on Environmental Quality  
3 may extend the period for technical review of an application for a  
4 new or amended water right under Section 11.129, Water Code, as  
5 amended by this Act, by a period not to exceed 18 months from the  
6 date the rules take effect if:

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

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

14           (d) During an extension under Subsection (c) of this  
15 section, the executive director shall take all practicable measures  
16 to substantially meet all other applicable deadlines in Section  
17 11.129, Water Code, as amended by this Act, related to the technical  
18 review of an application.

19           SECTION 6. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2015.