

By: Taylor of Collin

S.B. No. 109

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 and drought  
24 contingency plans under Sections 11.1271 and 11.1272 are adequate.

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

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

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

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

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

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

20           (m) If the executive director grants an extension under  
21 Subsection (j) or (l), the executive director shall extend the  
22 deadline under Subsection (i) or (k), as appropriate, for an  
23 application:

24           (1) received after the application for which the  
25 extension was granted under Subsection (j) or (l); and

26           (2) that relates to a new appropriation of water in the  
27 same river basin as the application for which the extension was

1 granted under Subsection (j) or (l).

2 (n) The executive director shall provide notice in a timely  
3 manner to an applicant who receives an extension under Subsection  
4 (m).

5 (o) Not later than the 60th day after the date the executive  
6 director receives a timely response to a request under Subsection  
7 (i)(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 (p) If the executive director provides notice under  
15 Subsection (o)(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 the 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 (q) 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 review the application  
2 and related documents, rule on the issues presented at the hearing,  
3 and issue an order:

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

6 (2) requesting additional information as required by  
7 the commission; or

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

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

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

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

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

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

5           (u) The applicant may request an extension of the time to  
6 submit comments under Subsection (t)(1). The commission shall  
7 grant the request if the applicant demonstrates good cause for the  
8 extension.

9           (v) The executive director shall file the draft permit,  
10 draft notice, and technical memoranda associated with the  
11 application with the chief clerk of the commission:

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

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

18           (w) Notwithstanding any other provision of this section, if  
19 the executive director makes a written determination that notice is  
20 not required for an application, the executive director shall grant  
21 or deny the permit for which the application is filed not later than  
22 the 300th day after the date the executive director receives the  
23 application. This period shall be extended by the same amount of  
24 time as the amount of any extension of time granted to the applicant  
25 for the provision of information [~~The commission shall determine~~  
26 ~~whether the application, maps, and other materials comply with the~~  
27 ~~requirements of this chapter and the rules of the commission. The~~

1 ~~commission may require amendment of the application, maps, or other~~  
2 ~~materials to achieve necessary compliance].~~

3 SECTION 2. Section 11.133, Water Code, is amended to read as  
4 follows:

5 Sec. 11.133. HEARING. (a) At the time and place stated in  
6 the notice, the commission shall hold a hearing on the application.  
7 Any person may appear at the hearing in person or by attorney or may  
8 enter an ~~his~~ appearance in writing. Any person who appears may  
9 present objection to the issuance of the permit. The commission may  
10 receive evidence, orally or by affidavit, in support of or in  
11 opposition to the issuance of the permit, and it may hear arguments.

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

15 (1) a disputed question of fact; and

16 (2) relevant and material to a decision on the  
17 application.

18 (c) If the commission grants a request for a hearing, the  
19 commission shall:

20 (1) determine the number and scope of issues to be  
21 referred to the State Office of Administrative Hearings for a  
22 hearing; and

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

26 (d) If the application has been determined to be  
27 administratively complete and the time for requesting more



1 information under Section 11.129(i)(2) has expired, the  
2 commission:

3 (1) may not revoke that determination; and

4 (2) may request additional information from the  
5 applicant only if the information is necessary to clarify, modify,  
6 or supplement previously submitted information.

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

9 (f) If the commission refers an issue regarding an  
10 application to the State Office of Administrative Hearings for a  
11 hearing, the administrative law judge who conducts the hearing may  
12 not grant party status to a person who failed to seek party status  
13 from the commission before the issue was referred to the office.

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

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

19 (b) The changes in law made by this Act apply only to an  
20 application for a new or amended water right received by the Texas  
21 Commission on Environmental Quality on or after the effective date  
22 of the rules adopted under Subsection (a) of this section. An  
23 application received before the effective date of the rules adopted  
24 under Subsection (a) of this section is governed by the law in  
25 effect on the date the application was received, and the former law  
26 is continued in effect for that purpose.

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) of  
12 this subsection affect the same river basin as the application for  
13 which the 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 4. 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.