

By: Birdwell, et al.

S.B. No. 216

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 Subsection (d-1) 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.

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

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

1 reviewed.

2 SECTION 3. Section [2003.024](#), Government Code, is amended by
3 amending Subsections (a), (a-2), (c), and (d) and adding
4 Subsections (a-3) and (a-4) to read as follows:

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

21 (1) an hourly rate that is set by the office;
22 (A) in an amount that sufficiently covers the
23 office's full costs in conducting a hearing or procedure for the
24 agency, including costs for items listed in Subsection (c)(2); and
25 (B) in time for the rate to be reviewed by the
26 legislature, as part of the legislature's review of the office's
27 legislative appropriations request for the biennium, in

1 determining the office's legislative appropriations for the
2 biennium; and

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

6 (a-2) The office, for a contract entered into as provided by
7 Subsection (a):

8 (1) may only require the referring agency to make an
9 additional payment to the office if the agency's actual hourly
10 usage of the office's services is greater than the agency's
11 anticipated hourly usage of the office's services as estimated
12 under Subsection (a-1) for a fiscal year by more than 10 percent;
13 and

14 (2) is only required to reimburse the referring agency
15 if the agency's actual hourly usage of the office's services is less
16 than the agency's anticipated hourly usage of the office's services
17 as estimated under Subsection (a-1) for a fiscal year by more than
18 10 percent.

19 (a-3) The office, for a contract entered into as provided
20 under Subsection (a) under which a quarterly amount is paid by the
21 referring agency to the office, shall:

22 (1) track the agency's actual hourly usage of the
23 office's services during each fiscal quarter and forecast, after
24 each fiscal quarter, the agency's anticipated hourly usage for the
25 rest of the fiscal year; and

26 (2) make adjustments to the quarterly amount if the
27 office forecasts under Subdivision (1) that the agency's actual

1 hourly usage of the office's services will differ from anticipated
2 hourly usage of the office's services estimated under Subsection
3 (a-1) by 10 percent or more at the end of the fiscal year.

4 (a-4) If a state agency did not refer matters to the office
5 during any of the three state fiscal years preceding a state fiscal
6 biennium for which complete information about the agency's hourly
7 usage would have been available and did not provide information to
8 the office sufficient for the office to reasonably and timely
9 estimate anticipated usage and enter into a contract with the
10 agency before the start of the state fiscal biennium, and the costs
11 to the office of conducting hearings and alternative dispute
12 resolution procedures for the state agency are not paid by
13 appropriations to the office for the state fiscal biennium, the
14 referring agency shall pay the office the costs of conducting
15 hearings or procedures for the agency based on the hourly rate that
16 is set by the office under Subsection (a) and on the agency's actual
17 usage of the office's services.

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

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

25 (2) an estimate of its hourly costs in conducting each
26 type of hearing or dispute resolution procedure[~~-. The office shall~~
27 ~~estimate the hourly cost~~] based on the average cost per hour during

the preceding state fiscal year of:

(A) the salaries of its administrative law judges;

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

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

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

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

(2) under the administrative license revocation program.

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

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

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

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

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

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

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

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

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

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

(c) ~~[Only an administrative law judge in the division may conduct a hearing on behalf of the commission. An administrative law judge in the division may conduct hearings for other state agencies as time allows.]~~ The office may ~~[transfer an~~

1 ~~administrative law judge to the division on a permanent or~~
2 ~~temporary basis and may~~] contract with qualified individuals to
3 serve as temporary administrative law judges as necessary.

4 SECTION 8. Section 2003.048, Government Code, is amended to
5 read as follows:

6 Sec. 2003.048. TEXAS [~~NATURAL RESOURCE CONSERVATION~~]
7 COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. The office shall
8 charge the Texas [~~Natural Resource Conservation~~] Commission on
9 Environmental Quality a fixed annual fee rather than an hourly rate
10 for services rendered by the office to the commission. The amount
11 of the fee may not be less than the amount appropriated to the Texas
12 [~~Natural Resource Conservation~~] Commission on Environmental
13 Quality in the General Appropriations Act for payment to the office
14 [~~natural resource conservation division~~] to conduct commission
15 hearings. The amount of the fee shall be based on the costs of
16 conducting the hearings, the costs of travel expenses and telephone
17 charges directly related to the hearings, docketing costs, and
18 other applicable administrative costs of the office [~~including the~~
19 ~~administrative costs of the natural resource conservation~~
20 ~~division~~]. The office and the Texas [~~Natural Resource~~
21 ~~Conservation~~] Commission on Environmental Quality shall negotiate
22 the amount of the fixed fee biennially, subject to the approval of
23 the governor, to coincide with the commission's legislative
24 appropriations request.

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

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

SECTION 10. Sections [2003.049](#)(a), (b), (c), (k), and (l), Government Code, are amended to read as follows:

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

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

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

(k) Hearings conducted for the commission by the office shall be held in hearing rooms provided by the commission. The commission shall also provide the office ~~[utility division]~~ access to its computer systems, databases, and library resources.

(l) The office shall charge the commission a fixed annual fee rather than an hourly rate for services rendered ~~[by the utility division]~~ to the commission. The amount of the fee may not be less

1 than the amount appropriated to the commission in the General
2 Appropriations Act for payment to the office [~~utility division~~] to
3 conduct commission hearings. The amount of the fee shall be based
4 on the costs of conducting the hearings, the costs of travel
5 expenses and telephone charges directly related to the hearings,
6 docketing costs, and other applicable administrative costs of the
7 office [~~including the administrative costs of the utility~~
8 ~~division~~]. The office and the commission shall negotiate the
9 amount of the fixed fee biennially, subject to the approval of the
10 governor, to coincide with the commission's legislative
11 appropriations request.

12 SECTION 11. Section 2003.051, Government Code, is amended
13 to read as follows:

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

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

27 SECTION 12. The heading to Subchapter D, Chapter 2003,

1 Government Code, is amended to read as follows:

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

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

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

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

8 (a) The office shall [~~establish a tax division to~~] conduct
9 hearings relating to contested cases involving the collection,
10 receipt, administration, and enforcement of taxes, fees, and other
11 amounts as prescribed by Section 111.00455, Tax Code.

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

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

18 (1) be a United States citizen;

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

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

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

25 [~~(5) have devoted at least 75 percent of the person's~~
26 ~~legal practice to Texas state tax law in at least five of the past 10~~
27 ~~years before the date on which the person begins employment in the~~

1 ~~tax division~~].

2 (i) For each hearing conducted under this section, an
3 administrative law judge [~~in the tax division~~] shall issue a
4 proposal for decision that includes findings of fact and
5 conclusions of law. In addition, the proposal for decision must
6 include the legal reasoning and other analysis considered by the
7 judge in reaching the decision. Each finding of fact or conclusion
8 of law made by the judge must be:

9 (1) independent and impartial; and

10 (2) based on state law and the evidence presented at
11 the hearing.

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

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

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

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

21 Sec. 2003.104. CONFIDENTIALITY OF TAX HEARING [~~DIVISION~~]
22 INFORMATION.

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

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

26 SECTION 18. Section 2003.109, Government Code, is amended
27 to read as follows:

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

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

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

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

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

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

(1) a tax imposed under this title; and

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

(c) A reference in law to the comptroller that relates to the performance of a contested case hearing described by Subsection

(a) means the ~~[tax division of the]~~ State Office of Administrative Hearings.

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

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

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

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

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

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

1 (3) provide for the transfer of funding for department
2 employees responsible for scheduling hearings under this
3 subchapter from the department to the State Office of
4 Administrative Hearings when the State Office of Administrative
5 Hearings assumes responsibility for initial scheduling of hearings
6 under this subchapter.

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

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

16 (a) The commission shall adopt and enforce rules governing
17 practice and procedure before the commission and, as applicable,
18 practice and procedure before the ~~[utility division of the]~~ State
19 Office of Administrative Hearings.

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

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

25 (b) The commission may delegate to the ~~[utility division of~~
26 ~~the]~~ State Office of Administrative Hearings the authority to make
27 a final decision and to issue findings of fact, conclusions of law,

1 and other necessary orders in a proceeding in which there is not a
2 contested issue of fact or law.

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

5 (a) The railroad commission by rule shall provide for
6 administrative hearings in contested cases to be conducted by one
7 or more members of the railroad commission, by railroad commission
8 hearings examiners, or by the ~~[utility division of the]~~ State
9 Office of Administrative Hearings. The rules must provide for a
10 railroad commission hearings examiner or the ~~[utility division of~~
11 ~~the]~~ State Office of Administrative Hearings to conduct each
12 hearing in a contested case that is not conducted by one or more
13 members of the railroad commission. A hearing must be conducted in
14 accordance with the rules and procedures adopted by the railroad
15 commission.

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

22 (c) The railroad commission by rule shall define the
23 procedures by which it delegates final decision-making authority
24 under Subsection (b) to a railroad commission hearings examiner or
25 to the ~~[utility division of the]~~ State Office of Administrative
26 Hearings.

27 (e) The State Office of Administrative Hearings shall

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

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

- (1) Section 2003.101(c);
- (2) Section 2003.102;
- (3) Section 2003.106; and
- (4) Section 2003.107.

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

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

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

1 effect for that purpose.

2 (d) Not later than September 1, 2016, the Texas Department
3 of Transportation and the chief administrative law judge of the
4 State Office of Administrative Hearings shall adopt an initial
5 memorandum of understanding under Section 524.033(c),
6 Transportation Code, as added by this Act.

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

9 (b) Section 524.032(b), Transportation Code, as amended by
10 this Act, takes effect September 1, 2016.