

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

(e-1) Notwithstanding any other law, in a contested case

SENATE VERSION (CS)

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.

CONFERENCE

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

before the agency that concerns licensing in relation to an occupational license, a state agency may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The state agency may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Subsection (f)(5). Except as provided by Subsection (f), for each case, the state agency has the sole authority and discretion to determine the appropriate action or sanction, and the administrative law judge may not make any recommendation regarding the appropriate action or sanction.

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 reviewed.

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

(a) If a state agency referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not to be paid by appropriations to the office during a state fiscal

SECTION 2. Same as House version.

SECTION 3. Same as House version.

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

biennium, the office and the agency shall enter into an interagency contract for the biennium under which the referring agency pays the office either a lump-sum amount[;] at the start of each fiscal year of the biennium or a fixed amount at the start of each fiscal quarter of the biennium for all services provided to the agency[; a lump-sum amount to cover the costs of conducting all hearings and procedures] during the fiscal year. The office shall report to the Legislative Budget Board any agency that fails to make a timely payment under the contract. The lump-sum or quarterly amount paid to the office under the contract must be based on:

(1) an hourly rate that is set by the office;

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

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

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

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

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

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

(a-3) If a state agency did not refer matters to the office during any of the three state fiscal years preceding a state fiscal biennium for which complete information about the

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

agency's hourly usage would have been available and did not provide information to the office sufficient for the office to reasonably and timely estimate anticipated usage and enter into a contract with the agency before the start of the state fiscal biennium, and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not paid by appropriations to the office for the state fiscal biennium, the referring agency shall pay the office the costs of conducting hearings or procedures for the agency based on the hourly rate that is set by the office under Subsection (a) and on the agency's actual usage of the office's services.

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

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

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure [~~—The office shall 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

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

(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

SECTION 4. Same as House version.

SECTION 5. Same as House version.

SECTION 6. Same as House version.

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

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

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

Sec. 2003.048. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON

SECTION 7. Same as House version.

SECTION 8. Same as House version.

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

ENVIRONMENTAL QUALITY HEARINGS FEE. The office shall charge the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality a fixed annual fee rather than an hourly rate for services rendered by the office to the commission. The amount of the fee may not be less than the amount appropriated to the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality in the General Appropriations Act for payment to the office ~~[natural resource conservation division]~~ to conduct commission hearings. The amount of the fee shall be based on the costs of conducting the hearings, the costs of travel expenses and telephone charges directly related to the hearings, docketing costs, and other applicable administrative costs of the office ~~[including the administrative costs of the natural resource conservation division]~~. The office and the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality shall negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with the commission's legislative appropriations request.

SECTION 9. The heading to Section 2003.049, Government Code, is amended to read as follows:
Sec. 2003.049. UTILITY HEARINGS ~~[DIVISION]~~.

SECTION 10. Sections 2003.049(a), (b), and (c), 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.

SECTION 9. Same as House version.

SECTION 10. Same as House version.

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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.

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

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

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

SENATE VERSION (CS)

SECTION 11. Same as House version.

CONFERENCE

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

SECTION 12. The heading to Subchapter D, Chapter 2003, Government Code, is amended to read as follows:
SUBCHAPTER D. TAX HEARINGS [~~DIVISION~~]

SECTION 12. Same as House version.

SECTION 13. The heading to Section 2003.101, Government Code, is amended to read as follows:
Sec. 2003.101. TAX HEARINGS [~~DIVISION~~].

SECTION 13. Same as House version.

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

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

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

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

- (1) be a United States citizen;
- (2) be an attorney in good standing with the State Bar of Texas;
- (3) have been licensed in this state to practice law for at least seven years; and
- (4) have substantial experience in tax cases in making the record suitable for administrative review [~~or otherwise; and~~

SECTION 14. Same as House version.

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

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

SECTION 17. The heading to Section 2003.105, Government

SENATE VERSION (CS)

SECTION 15. Same as House version.

SECTION 16. Same as House version.

SECTION 17. Same as House version.

CONFERENCE

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

Code, is amended to read as follows:
Sec. 2003.105. TAX ~~[DIVISION]~~ HEARINGS FEE.

SECTION 18. Section 2003.109, Government Code, is amended 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 18. Same as House version.

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 19. Same as House version.

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:

SECTION 20. Same as House version.

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (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:

SENATE VERSION (CS)

SECTION 21. Same as House version.

SECTION 22. Same as House version.

CONFERENCE

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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

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

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

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

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

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

SENATE VERSION (CS)

SECTION 23. Same as House version.

SECTION 24. Same as House version.

CONFERENCE

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) to a railroad commission

SENATE VERSION (CS)

SECTION 25. Same as House version.

CONFERENCE

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

hearings examiner or to the [~~utility division of the~~] State Office of Administrative Hearings.

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

SECTION 27. (a) Section 2001.058(d-1), Government Code, as added by this Act, applies only to a hearing conducted by 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.

SENATE VERSION (CS)

SECTION 26. Same as House version.

SECTION 27. Same as House version.

CONFERENCE

House Bill 2154
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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 effect for that purpose.

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

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

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

SENATE VERSION (CS)

SECTION 28. Same as House version.

CONFERENCE