

BILL ANALYSIS

Senate Research Center
85R1965 SLB-F

S.B. 225
By: Taylor, Van
Agriculture, Water & Rural Affairs
3/30/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties observe that the length of time needed to secure a state water right impedes progress towards timely delivery of needed water supply projects. While the Texas Commission on Environmental Quality (TCEQ) has administrative procedures in place to conduct administrative and technical reviews of water rights applications timely, interested parties observe that the contested case hearing process contributes to the delay of permit issuances. Here, interested parties observe that once TCEQ refers a contested case hearing to the State Office of Administrative Hearings (SOAH), additional issues and parties may be admitted by the SOAH administrative law judge to the case. This practice of admitting additional parties and issues prolongs the hearing process and may be leveraged by a water right's protestants to delay or obstruct a given water supply project. In some instances, contested case hearings for water rights applications can take several years. Interested parties contend that these delays preclude the timely, expeditious development of needed water supply projects, including those described within the State Water Plan.

S.B. 225 proposes several reforms to ensure that contested case hearings for water rights are conducted within a reasonable time frame. The bill limits the issues admissible to a water right hearing to those identified by TCEQ before the hearing. Further, S.B. 225 grants party status to parties that objected to a water right application before TCEQ. Lastly, S.B. 225 requires that a contested case hearing be conducted within 270 days. While hearings must be completed within nine months, the bill allows a SOAH judge to extend a hearing, if needed, in order to ensure a party's right to due process or any other constitutional right.

As proposed, S.B. 225 amends current law relating to the referral by the Texas Commission on Environmental Quality to the State Office of Administrative Hearings of an issue regarding an application for a water right.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affected the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.133, Water Code, as follows:

Sec. 11.133. HEARING. (a) Creates this subsection from existing text. Makes nonsubstantive changes.

(b) Prohibits the Texas Natural Resource Conservation Commission (TNRCC) from referring an issue regarding an application to the State Office of Administrative Hearings (SOAH) for a hearing unless TNRCC determines the issue is a disputed question of fact, or a disputed mixed question of law and fact, and relevant and material to a decision on the application.

(c) Requires TNRCC, if TNRCC grants a request for a hearing, to determine the number and scope of issues to be referred to SOAH for a hearing and to specify the maximum expected duration of the proceeding consistent with the nature and number of issues to be considered, starting with the preliminary hearing and concluding with the issuance of the proposal for decision. Prohibits the total duration of the proceeding from exceeding 270 days.

(d) Authorizes the administrative law judge conducting the hearing to extend the proceeding beyond the specified period if the judge determines that failure to extend the proceeding would deprive a party of due process or another constitutional right.

(e) Prohibits the administrative law judge conducting the hearing, if TNRCC refers an application to SOAH, from granting party status to an affected person who objects to the application if the person failed to submit a request to TCEQ for a hearing in accordance with Section 11.132 (Notice). Provides that this subsection does not apply to the applicant, the office of public interest counsel, or the executive director of TNRCC.

(f) Provides that this section prevails over any other law in the event of a conflict.

SECTION 2. (a) Requires the Texas Commission on Environmental Quality to adopt rules to implement the changes in law made by this Act as soon as practicable after the effective date of this Act.

(b) Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2017.