

BILL ANALYSIS

C.S.H.B. 3114
By: Kacal
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that providing for administrative law judges at the Texas Commission on Environmental Quality (TCEQ) to conduct hearings on matters before TCEQ, rather than having such matters referred to the State Office of Administrative Hearings (SOAH), would allow for administrative law judges who deal with these cases to become experts in the various TCEQ permitting and enforcement programs. C.S.H.B. 3114 seeks to address this issue by providing for contested case hearings relating to TCEQ matters to be conducted at TCEQ instead of SOAH.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 4.01 of this bill.

ANALYSIS

C.S.H.B. 3114 amends the Water Code to replace the authorization for the Texas Commission on Environmental Quality (TCEQ) to delegate to an administrative law judge of the State Office of Administrative Hearings (SOAH) the responsibility to hear any matter before TCEQ with an authorization for TCEQ to delegate to an administrative law judge employed or contracted by TCEQ the responsibility to hear any such matter. The bill repeals Government Code provisions relating to SOAH hearings for TCEQ and establishes similar provisions in the Water Code for TCEQ, including provisions requiring an administrative law judge to whom TCEQ has delegated a contested case hearing to conduct the hearing and providing for temporary or permanent administrative law judges and technical advisors, and makes related changes.

C.S.H.B. 3114 explicitly authorizes TCEQ to employ or contract with administrative law judges to assist TCEQ in carrying out its duties and establishes that such judges are independent of the executive director of TCEQ. The bill sets out the powers of an administrative law judge employed by TCEQ and of a temporary administrative law judge, prohibits an administrative law judge from serving as an impartial third party for a dispute that the administrative law judge refers to an alternative dispute resolution procedure, sets out provisions relating to ex parte consultations, and makes certain provisions relating to the delegation of hearings applicable to hearings held for matters under TCEQ jurisdiction.

C.S.H.B. 3114 requires TCEQ, not later than September 1, 2020, to adopt rules to implement the bill's provisions. The bill requires the chief administrative law judge of SOAH and the executive director of TCEQ to enter into a memorandum of understanding to:

- determine the number of administrative law judges necessary to conduct hearings for

TCEQ effectively and other details related to the qualification and requirements of those administrative law judges;

- make the necessary changes in SOAH to implement the bill; and
- arrange for the transfer from SOAH to TCEQ of all equipment, data, facilities, and other items related to hearings conducted on behalf of TCEQ, to occur not later than September 1, 2020.

C.S.H.B. 3114 applies only to a contested case hearing referred by TCEQ to an administrative law judge on or after September 1, 2020.

C.S.H.B. 3114 amends the Government Code to make conforming changes.

C.S.H.B. 3114 repeals the following provisions:

- Section 2003.047, Government Code
- Section 2003.048, Government Code
- Section 5.313, Water Code

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3114 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions explicitly authorizing TCEQ to employ or contract with administrative law judges to assist TCEQ in carrying out its duties and establishing that such judges are independent of the executive director of TCEQ. The substitute includes provisions:

- setting out the powers of an administrative law judge employed by TCEQ and of a temporary administrative law judge;
- prohibiting an administrative law judge from serving as an impartial third party for a dispute that the administrative law judge refers to an alternative dispute resolution procedure;
- setting out provisions relating to ex parte consultations; and
- making certain provisions relating to the delegation of hearings applicable to hearings held for matters under TCEQ jurisdiction.

The substitute changes certain bill provisions to reflect the inclusion of the substitute's provisions regarding contested case hearings at TCEQ, with respect to conforming and related changes.

The substitute includes provisions:

- requiring TCEQ, not later than September 1, 2020, to adopt rules to implement the bill;
- requiring the chief administrative law judge of SOAH and the executive director of TCEQ to enter into a certain memorandum of understanding; and
- making the bill applicable only to a contested case hearing referred by TCEQ to an administrative law judge on or after September 1, 2020.