

BILL ANALYSIS

C.S.H.B. 2778
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The State Office of Administrative Hearings (SOAH) is the agency that serves as an independent forum for conducting administrative hearings in the executive branch of state government. The purpose of SOAH is to act in a quasi-judicial capacity by separating the adjudicative hearings function from the investigative, prosecutorial, and policymaking functions of state regulatory agencies. Since SOAH's last Sunset Commission review in 2015, SOAH has taken broad steps to modernize its technology, streamline its organizational structure, and promote greater quality and uniformity in its hearing practices. Although SOAH is not due for another formal Sunset review until 2027, C.S.H.B. 2778 seeks to codify many of these interim improvements in an effort to improve SOAH's efficiency and effectiveness.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2778 makes changes relating to the operation and administration of the State Office of Administrative Hearings (SOAH).

Criminal History Record Information

C.S.H.B. 2778 amends the Government Code to entitle SOAH to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to the following persons:

- an employee of, or an applicant for employment with, SOAH;
- a contractor, volunteer, or intern of SOAH, or an applicant to serve in one of those capacities; or
- a current or proposed contractor or subcontractor of SOAH.

The bill authorizes SOAH, in accordance with provisions governing access to criminal history record information maintained by the FBI or other local criminal justice agencies, to obtain through the FBI criminal history record information maintained or indexed by the FBI that pertains to such persons. Information obtained from the FBI in this manner may not be released or disclosed to any person, and state criminal history record information obtained by SOAH from DPS may not be released or disclosed to any person except by court order or with the written consent of the person who is the subject of the information. The bill requires SOAH to destroy criminal history record information obtained from DPS that relates to the following:

- an applicant for employment with SOAH after the applicant is employed or, if the

- applicant is not employed, after SOAH has made that final employment determination; or
- an employee, contractor, volunteer, or intern of SOAH after SOAH has completed a criminal history record information check on the person.

Deputy Chief Administrative Law Judge

C.S.H.B. 2778 authorizes the chief administrative law judge of SOAH to appoint one or more deputy chief administrative law judges to serve at the chief judge's pleasure to assist with the administration of SOAH. To be eligible for appointment as a deputy chief administrative law judge, an individual must be licensed to practice law in Texas and meet other requirements prescribed by the chief administrative law judge. The bill requires a deputy chief administrative law judge to do the following:

- perform the duties the chief administrative law judge is required by law to perform when the chief administrative law judge is absent or unable to act;
- supervise administrative law judges employed by SOAH, including individuals appointed as senior or master administrative law judges; and
- perform other duties assigned by the chief administrative law judge.

Use of Certain Technology

C.S.H.B. 2778 does the following with respect to SOAH's use of technology for administrative purposes:

- removes the requirement for the technological solutions, developed and implemented by the chief administrative law judge to improve SOAH's functioning, to be in the form of a policy researched and proposed by the chief administrative law judge and SOAH employees;
- removes the requirement for the solutions to be developed through SOAH's planning processes; and
- requires such solutions to use, to the greatest extent practicable, the technology standards of the Department of Information Resources (DIR) and the judicial committee on information technology.

C.S.H.B. 2778 authorizes an administrative law judge assigned to preside over a contested case or alternative dispute resolution proceeding to order the use of videoconferencing technology to conduct a SOAH proceeding. The presiding judge and the parties and their attorneys may participate in the proceeding from any location when using videoconferencing technology. The bill authorizes SOAH to assist a party in attending a proceeding conducted by videoconferencing technology by making the technology available for the party's use at the permanent SOAH location nearest to the party in certain circumstances. If a party objects within a reasonable time after receiving notice of an order authorizing the use of videoconferencing technology to conduct a proceeding and states good cause for the objection, the presiding judge must consider the objection in a manner consistent with the Texas Rules of Civil Procedure and rule on the objection in a timely manner before the scheduled proceeding. The bill repeals the requirement for SOAH rules regarding the participation of a witness by telephone to include procedures to verify the identity of the witness who is to appear by telephone.

C.S.H.B. 2778 authorizes SOAH to deliver a decision or order using the following methods:

- an electronic filing system approved by the Office of Court Administration of the Texas Judicial System (OCA); or
- another method of electronic delivery, including by email sent to the current email address of the party's attorney of record or, if the party is not represented by counsel, to the party's current email address.

The bill authorizes SOAH to require a party and the party's attorney of record to provide and maintain an email address on file with SOAH for the purpose of receiving electronic delivery of documents and communications from SOAH.

Memorandums of Understanding; Interagency Contracts

C.S.H.B. 2778 eliminates requirements under the Agriculture Code, Labor Code, Insurance Code, and Human Resources Code for the chief administrative law judge to enter into memorandums of understanding with the commissioner of agriculture, commissioner of workers' compensation, commissioner of insurance, Health and Human Services Commission, and Department of Family and Protective Services (DFPS), respectively, governing procedures for hearings conducted by SOAH on behalf of the applicable agency. The repeal of the requirement to enter into such a memorandum of understanding with the commissioner of insurance takes effect September 1, 2023.

C.S.H.B. 2778 also removes provisions under the Agriculture Code and Human Resources Code relating to interagency contracts for the reimbursement of SOAH by the Department of Agriculture and DFPS and repeals a requirement under the Government Code for SOAH and the Texas Department of Insurance to enter into an interagency contract to pay the costs of hearing workers' compensation cases.

Repealed Government Code Provisions

C.S.H.B. 2778 repeals Government Code provisions that do the following:

- establish requirements regarding the manner in which SOAH conducts hearings under the Agriculture Code and under applicable workers' compensation law;
- require SOAH to track and forecast hourly usage of its services under an interagency contract that provides for quarterly payments by a referring agency;
- provide for the composition of SOAH's central hearings panel, including an authorization for the chief administrative law judge to create teams or divisions within the panel; and
- require SOAH to review the status of pending tax hearing cases with the comptroller of public accounts and other appropriate staff at least quarterly.

Hearings Regarding Suspension or Denial of Driver's License

C.S.H.B. 2778 amends the Transportation Code to change the earliest date that a rescheduled hearing regarding the administrative suspension of a driver's license for failure to pass a test for intoxication may be held from not earlier than the fifth day after the date the request for continuance is granted to not earlier than the 30th day after that date and repeals provisions that do the following with respect to a hearing regarding such a suspension:

- require DPS and the chief administrative law judge to adopt and update a memorandum of understanding establishing that SOAH has primary scheduling responsibility for the hearings; and
- require SOAH and DPS to consult with DIR and OCA to develop any information technology solutions needed to complete the transfer of such responsibilities.

The bill removes the specification that a fax transmission is a method by which DPS may receive a written request for such a hearing. The bill removes the option for such a hearing or a hearing regarding the suspension or denial of a driver's license on refusal to submit a specimen following an arrest for certain offenses to be held by telephone conference call with the consent of DPS and the applicable person and provides instead the option for those hearings to be held by videoconferencing technology as provided by the bill for SOAH proceedings generally.

Repealed Provisions

C.S.H.B. 2778 repeals the following provisions:

- Sections 2003.021(c) and (d), 2003.024(a-2), 2003.046, 2003.050(c), and 2003.108, Government Code;
- Section 22.018, Human Resources Code;
- Sections 524.033(c) and (d), Transportation Code; and
- effective September 1, 2023, Section 40.004, Insurance Code.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2778 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and substitute prohibit the release or disclosure of criminal history record information obtained by SOAH from DPS to any person except by court order or with the written consent of the person who is the subject of the information, but the substitute clarifies that this provision applies to state criminal history record information.

The substitute includes a provision absent from the introduced providing for the ability of a party to a contested case or alternative dispute resolution proceeding to object to an order from the administrative law judge that authorizes the use of videoconferencing technology to conduct a proceeding and for the judge's duty to consider and rule on the objection.

The substitute removes the specification that a fax transmission is a method by which DPS may receive a written request for a hearing regarding the administrative suspension of a driver's license for failure to pass a test for intoxication, whereas the introduced did not remove that specification. The introduced repealed provisions requiring such a hearing or a hearing regarding the suspension or denial of a driver's license on refusal to submit a specimen to be held at a location in a specified county or, with the consent of the person requesting the hearing and DPS, by telephone conference call. The substitute does not repeal those provisions and instead replaces the option to hold the hearings by telephone conference call with the option to hold the hearings by videoconferencing technology as provided by the bill.