

SUBJECT: Expediting application review for certain water rights amendments

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 8 ayes — Larson, Phelan, Ashby, Frank, Kacal, Lucio, Price, Workman

0 nays

3 absent — Burns, T. King, Nevárez

SENATE VOTE: On final passage, April 18 — 31-0

WITNESSES: *On House companion bill, HB 2894:*

For — Carlos Rubinstein; (*Registered, but did not testify*: Julie Williams, Chevron; Bill Oswald, Koch Companies; Trace Finley, Seven Seas Water; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Stephanie Simpson, Texas Association of Manufacturers; Stephen Minick, Texas Association of Business; Martha Landwehr, Texas Chemical Council; Kyle Frazier, Texas Desalination Association; Billy Howe, Texas Farm Bureau; Cory Pomeroy, Texas Oil and Gas Association; Perry Fowler, Texas Water Infrastructure Network (TXWIN); Karen Munoz)

Against — Christopher Mullins, Sierra Club; (*Registered, but did not testify*: Tom Glass, League of Independent Voters)

On — Lisa Halili, Prestige Oyster Inc.

BACKGROUND: Water Code, sec. 11.122 requires all water right holders to obtain an amendment to the water right if the holder wants to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter the water right.

Government Code, sec. 2003.047 allows the Texas Commission on Environmental Quality (TCEQ) to delegate the responsibility to hear contested matters to the State Office of Administrative Hearings.

DIGEST: SB 1430 would provide a water right holder who began using desalinated seawater with expedited consideration of a water right amendment application. This could occur only if the amendment did not authorize the diverted water to be transferred to another river basin but did authorize the applicant to divert water:

- from a new diversion point at an amount that was equal to or less than the amount of desalinated water used by the applicant;
- from all authorized diversion points at an amount that was equal to or less than the amount originally authorized; and
- from all authorized diversion points at a combined rate that was equal to or less than the rate originally authorized.

The executive director of the Texas Commission on Environmental Quality (TCEQ) would have to prioritize the technical review of these applications over the technical review of other applications.

An administrative law judge would be required to complete a contested proceeding and provide a decision proposal to TCEQ not later than the 270 days after the date of referral.

This bill would take effect September 1, 2017, and would apply only to an application for an amendment to a water right that was filed with TCEQ on or after that date.

SUPPORTERS SAY: SB 1430 would incentivize water desalination in Texas by providing a mechanism for existing water right holders using desalinated water to maximize the use of their allocated surface water rights. The Texas Commission on Environmental Quality would maintain proper regulatory oversight regarding expedited applications, and the 270-day period for decision proposals would provide adequate time for the review of any potential issues.

OPPONENTS SAY: SB 1430 would impose a strict 270-day time limit on administrative law hearings of contested amendment applications, which could prevent careful consideration of all issues that exist in certain circumstances. This

could run counter to the purpose of the application process, which is to ensure the protection of the state's surface water resources.

NOTES:

A companion bill, HB 2894 by Lucio, was reported favorably by the House Natural Resources Committee on April 27 and placed on the General State Calendar for May 10.