

## **BILL ANALYSIS**

Senate Research Center  
78R893 KEG-D

S.B. 1147  
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### **DIGEST AND PURPOSE**

The State Office of Administrative Hearings (SOAH) was created in 1991 to conduct administrative law hearings and alternative dispute resolution proceedings involving Texas state agencies, and other governmental entities, private citizens, and corporations doing business within the state. More than seventy state agencies and local political subdivisions refer cases to SOAH. SOAH is subject to review, but not abolishment, under the Sunset Act. As proposed, S.B. 1147 continues SOAH for the standard 12-year period until 2015 and transfers the administrative hearings function of the Texas Department of Licensing and Regulation to SOAH.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted in SECTION 8 (Section 2003.050, Government Code), by requiring rules adopted by the chief administrative law judge under this section to specify procedures to permit a witness to testify over the telephone at a hearing conducted by the office. Requires the rules to require the consent of all parties to the contested case or other matter before a witness is permitted to testify over the telephone and to include procedures for verification of the identity of the witness by a third party.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 552C, Government Code, by adding Section 552.141, as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. Provides that certain working papers of an administrative law judge at the State Office of Administrative Hearings (SOAH) are excepted from the requirements of Section 552.021.

SECTION 2. Amends Section 2003.021, Government Code, by adding Subsection (g), to require SOAH to conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation (TDLR) under Chapter 51, Occupations Code.

SECTION 3. Amends Section 2003.022, Government Code, by adding Subsection (e) to update standard Sunset language requiring the appointment of the chief administrative law judge to be made without regard to certain personal characteristics.

SECTION 4. Amends Chapter 2003B, Government Code, by adding Section 2003.0221, as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. Updates standard Sunset language relating to the grounds for removal of the chief administrative law judge.

SECTION 5. Amends Chapter 2003B, Government Code, by adding Sections 2003.0225 and 2003.0226, as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. Updates standard Sunset language relating to conflicts of interest.

Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR EMPLOYMENT AND STANDARDS OF CONDUCT. Updates standard Sunset language requiring information on standards of conduct to be provide to SOAH employees.

SECTION 6. Amends Section 2003.023, Government Code, to continue SOAH for the standard 12-year period until 2015 and require its review every 12th year after 2015.

SECTION 7. Amends Section 2003.024, Government Code, as follows:

Sec. 2003.024. New heading: INTERAGENCY CONTRACTS; ANTICIPATED HOURLY USAGE AND COST ESTIMATES. (a) Eliminates the process for billing agencies for hearing costs and provides instead for up-front payments to SOAH based on agencies' previous usage.

(a-1) Requires SOAH, before the beginning of each state fiscal biennium, to estimate for each fiscal year of the biennium the anticipated hourly usage for each state agency that 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. Requires SOAH to estimate an agency's anticipated hourly usage by evaluating certain criteria.

(a-2) Requires the referring agency, 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 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, to 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.

(b) Makes conforming changes. Deletes current language in text.

(c) Requires SOAH, as part of its legislative appropriation request, each state fiscal biennium, to 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 SOAH. Makes conforming changes.

SECTION 8. Amends Section 2003.050, Government Code, by adding Subsection (c), to require rules adopted by the chief administrative law judge under this section to specify procedures to permit a witness to testify over the telephone at a hearing conducted by the office. Requires the rules to require the consent of all parties to the contested case or other matter before a witness is permitted to testify over the telephone and to include procedures for verification of the identity of the witness by a third party.

SECTION 9. Amends Chapter 2003C, Government Code, by adding Sections 2003.052, 2003.053, 2003.054, 2003.055, and 2003.056, as follows:

Sec. 2003.052. HANDLING OF COMPLAINTS. (a) Updates standard Sunset language requiring SOAH to maintain a file on complaints.

Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Updates standard Sunset language requiring the chief administrative law judge or designee to develop an equal opportunity policy.

Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. Updates standard Sunset language requiring the chief administrative law judge or designee to provide SOAH employees with information and training on the benefits and methods of participation in the State Employee Incentive Program.

Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. Updates standard Sunset language requiring the chief administrative law judge to develop and implement a technology policy.

Sec. 2003.056. ALTERNATIVE DISPUTE RESOLUTION POLICY. Updates standard Sunset language requiring the chief administrative law judge to develop and implement a policy to encourage the use of alternative dispute resolution procedures where appropriate to assist in the internal and external resolution of disputes within SOAH's jurisdiction.

SECTION 10. Amends Section 51.305, Occupations Code, as follows:

- (a) Requires the hearing, if the respondent requests a hearing, to be conducted by SOAH.
- (b) Requires SOAH to consider TDLR's applicable substantive rules and policies when conducting a hearing under this subchapter.
- (c) Replaces "hearing officer" with "an administrative law judge at the State Office of Administrative Hearings" in existing text.

SECTION 11. Amends Section 51.354(a), Occupations Code, to make a conforming change.

SECTION 12. Amends Section 1802.203, Occupations Code, to require TDLR, if the amount is disputed by the auctioneer or the aggrieved party, to refer the matter to SOAH for a hearing on the disputed claim.

SECTION 13. Repealer: Sections 51.354 (b) and (c), Occupations Code (Right to Hearing; Administrative Procedure)

SECTION 14. Provides that on September 1, 2003:

- (1) all functions and activities performed by TDLR that relate to conducting administrative hearings at TDLR are transferred to SOAH;
- (2) two full-time equivalent employee positions are transferred from TDLR SOAH to provide the hearing services described in Sections 51.305, 51.354, and 1802.203, Occupations Code, as amended by this Act. Requires SOAH, when filling the two full-time equivalent employee positions, to give first consideration to an applicant employed as a hearings examiner or administrative technician at TDLR;
- (3) all property, including records, in the custody of TDLR related to providing administrative hearings under the former Sections 51.305, 51.354, and 1802.203, Occupations Code, becomes the property of SOAH, but stays in the same physical location unless moved in accordance with the plan created under Section 15 of this Act; and
- (4) all funds appropriated by the legislature to TDLR for purposes relating to conducting administrative hearings under the former Sections 51.305, 51.354, and 1802.203, Occupations Code, are transferred to SOAH.

SECTION 15. Requires TDLR and SOAH to establish a transition plan for the transfer described in Section 14 of this Act. Requires the plan to include certain criteria.

SECTION 16. (a) Effective date: September 1, 2003.

(b) Makes application of Section 2003.024, Government Code, as amended by this Act prospective to September 1, 2005.