

BILL ANALYSIS

Senate Research Center

H.B. 2154
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State Affairs
5/4/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The State Office of Administrative Hearings (SOAH), established in 1991, serves as the state's independent centralized administrative hearing tribunal to conduct unbiased contested case hearings and alternative dispute resolution proceedings for 62 state agencies and local political subdivisions.

SOAH is subject to review under the Sunset Act in 2015, but is not subject to abolishment. The Sunset Advisory Commission (Sunset) found that SOAH provides a needed and independent venue for contested matters and produces quality and timely decisions, but needs further independence, more stable funding, and improvement in its management of staff and diverse caseload.

The legislature also required Sunset to conduct a separate special purpose review of SOAH's tax division, which will be abolished and revert to the Office of the Comptroller of Public Accounts of the State of Texas on September 1, 2015, unless continued by the legislature. Sunset determined that tax hearings should continue at SOAH, but several safeguards initially put in place when the transfer occurred are now problematic and should be removed to ensure SOAH's independence.

Major Provisions in Sunset Legislation:

- Provides SOAH with greater authority over its billing to help stabilize its funding.
- Provides SOAH with organizational flexibility and better information to manage the agency.
- Continues tax hearings at SOAH, removes the separate Sunset date for these hearings, and removes outdated statutory provisions that give the perception of undue influence by the comptroller in these hearings.
- Requires SOAH and the Department of Public Safety of the State of Texas (DPS) to adopt a memorandum of understanding (MOU) establishing that SOAH has primary scheduling responsibility for administrative license revocation (ALR) cases.
- Authorizes SOAH to remand default cases to referring agencies for informal disposition.
- Prohibits occupational licensing agencies from changing a SOAH judge's order, and prohibits a SOAH judge from recommending a sanction or action in an occupational license case.

H.B. 2154 amends current law relating to the functions and operation of the State Office of Administrative Hearings.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 7 (Section 2003.047, Government Code) of this bill.

Rulemaking authority previously granted to the comptroller of public accounts of the State of Texas is modified in SECTION 18 (Section 2003.109, Government Code) of this bill.

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 23 (Section 14.052, Utilities Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 25 (Section 102.006, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.058, Government Code, by adding Subsections (d-1) and (e-1) and amending Subsection (e), as follows:

(d-1) Authorizes an administrative judge, on making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings (SOAH), to dismiss the case from the docket of SOAH and remand it to the referring agency for informal disposition under Section 2001.056 (Informal Disposition of Contested Case). Authorizes the state agency (agency) to informally dispose of the case by applying its own rules or the procedural rules of SOAH relating to default proceedings. Provides that this subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.

(e) Adds a reference to an exception provided by Subsection (e-1).

(e-1) Prohibits a state agency, notwithstanding any other law, in a contested case before the agency that concerns licensing in relation to an occupational license, from changing a finding of fact or conclusion of law or vacating or modifying an order of the administrative law judge. Authorizes the state agency to obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Subsection (f)(5) (relating to entitlement of judicial review). Provides that, except as provided by Subsection (f) (authorizing a state agency by rule to provide that in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case), for each case, the state agency has the sole authority and discretion to determine the appropriate action or sanction, and the administrative law judge may not make any recommendation regarding the appropriate action or sanction.

SECTION 2. Amends Section 2003.023, Government Code, to change references to 2015 to 2027.

SECTION 3. Amends Section 2003.024, Government Code, by amending Subsections (a), (a-2), (c), and (d) and adding Subsection (a-3), as follows:

(a) Requires SOAH and a state agency, if the state agency referred matters to SOAH during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available and the costs to SOAH of conducting hearings and alternative dispute resolution procedures for the state agency are not to be paid by appropriations to SOAH during a state fiscal biennium, to enter into an interagency contract for the biennium under which the referring agency pays SOAH either a lump-sum amount at the start of each fiscal year of the biennium or a fixed amount at the start of each fiscal quarter of the biennium for all services provided to the agency during the fiscal year, rather than enter into an interagency contract for the biennium under which the referring agency pays SOAH, at the start of each fiscal year of the biennium, a lump-sum amount to cover the costs of conducting all hearings and procedures during the fiscal year. Requires SOAH to report to the Legislative Budget Board (LBB) any agency that fails to make a timely payment under the contract. Requires that the lump-sum or quarterly amount paid to SOAH under the contract be based on:

(1) an hourly rate that is set by SOAH:

(A) in an amount that sufficiently covers SOAH's full costs in providing services to the agency, including costs for items listed in Subsection (c)(2); and

(B) in time for the rate to be reviewed by the legislature, as part of the legislature's review of SOAH's legislative appropriations request for the biennium, in determining SOAH's legislative appropriations for the biennium; and

(2) Makes no change to this subdivision.

(a-2) Requires SOAH, for a contract entered into as provided by Subsection (a) under which a quarterly amount is paid by the referring agency to SOAH, to:

(1) track the agency's actual hourly usage of SOAH's services during each fiscal quarter; and

(2) forecast, after each fiscal quarter, the agency's anticipated hourly usage for the rest of the fiscal year.

(a-3) Creates this subsection from existing text and makes no further change to this subsection.

(c) Requires SOAH as part of its legislative appropriation request, each state fiscal biennium, to file:

(1) Makes no change to this subdivision; and

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure based on the average cost per hour during the preceding state fiscal year of:

(A) and (B) Makes no change to these paragraphs;

(C) the administrative costs of SOAH, including docketing costs.

Deletes existing text requiring SOAH to estimate the hourly cost and the administrative costs of the division of SOAH that conducts the hearing or procedure.

(d) Provides that this section does not apply to hearings conducted:

(1) under Section 2003.047 (Natural Resource Conservation Division) or 2003.049 (Utility Division); or

(2) Makes no change to this subdivision.

Deletes existing Subdivisions (1) text providing that this section does not apply to hearings conducted by the natural resource conservation division or the utility division.

SECTION 4. Amends Subchapter B, Chapter 2003, Government Code, by adding Section 2003.025, as follows:

Sec. 2003.025. REQUIRED INFORMATION REGARDING ANTICIPATED HOURLY USAGE. (a) Provides that this section applies to a state agency that has entered into a contract with SOAH for the conduct of hearings and alternative dispute resolution procedures for the agency, including a contract under Section 2003.024 (Interagency

Contracts; Anticipated Hourly Usage and Costs Estimates), 2003.048 (Natural Resource Conservation Commission Hearings Fee), 2003.049, or 2003.105 (Tax Division Hearings Fee), during any of the three most recent state fiscal years.

(b) Requires a state agency to which this section applies, on a date determined by SOAH before the beginning of each state fiscal biennium, to submit to SOAH and the LBB information regarding the agency's anticipated hourly usage of SOAH's services for each fiscal year of that biennium.

SECTION 5. Amends Section 2003.0421(c), Government Code, to change a reference to the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality (TCEQ).

SECTION 6. Amends the heading to Section 2003.047, Government Code, to read as follows:

Sec. 2003.047. HEARINGS FOR TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.

SECTION 7. Amends Sections 2003.047(a), (b), and (c), Government Code, as follows:

(a) Requires SOAH to perform contested case hearings for TCEQ, rather than requiring SOAH to establish a natural resource conservation division to perform the contested case hearings for TNRCC.

(b) Changes references to the natural resource conservation division (division) to SOAH.

(c) Authorizes SOAH to contract with qualified individuals to serve as temporary administrative law judges as necessary, rather than authorizes SOAH to transfer an administrative law judge to the division on a permanent or temporary basis and to contract with qualified individuals to serve as temporary administrative law judges as necessary. Deletes existing text authorizing only an administrative law judge in the division to conduct a hearing on behalf of the commission. Deletes existing text authorizing an administrative law judge in the division to conduct hearings for other state agencies as time allows.

SECTION 8. Amends Section 2003.048, Government Code, to read as follows:

Sec. 2003.048. New heading: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY HEARINGS FEE. Authorizes SOAH to charge TCEQ, rather than TNRCC, a fixed annual fee rather than an hourly rate for services rendered by SOAH to TCEQ. Prohibits the amount of the fee from being less than the amount appropriated to TCEQ, rather than TNRCC, in the General Appropriations Act for payment to SOAH, rather than the division, to conduct TCEQ hearings. Requires that the amount of the fee be based on the costs of conducting the hearings, the costs of travel expenses and telephone charges directly related to the hearings, docketing costs, and other applicable administrative costs of SOAH, rather than other applicable administrative costs of SOAH including the administrative costs of the division. Requires SOAH and TCEQ, rather than SOAH and TNRCC, to negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with TCEQ's legislative appropriations request.

SECTION 9. Amends the heading to Section 2003.049, Government Code, to read as follows:

Sec. 2003.049. UTILITY HEARINGS.

SECTION 10. Amends Sections 2003.049(a), (b), and (c), Government Code, as follows:

(a) Requires SOAH to perform contested case hearings for the Public Utility Commission of Texas as prescribed by the Public Utility Regulatory Act of 1995 and other applicable law, rather than requires SOAH to establish a utility division (utility division) to perform

the contested case hearings for the Public Utility Commission of Texas (PUC) as prescribed by the Public Utility Regulatory Act of 1995 and other applicable law.

(b) Changes references to the utility division to SOAH.

(c) Authorizes SOAH to contract with qualified individuals to serve as temporary administrative law judges as necessary, rather than authorizes SOAH to transfer an administrative law judge into the division on a temporary or permanent basis and to contract with qualified individuals to serve as temporary administrative law judges as necessary. Deletes existing text authorizing only an administrative law judge in the utility division to conduct a hearing on behalf of PUC. Deletes existing text authorizing an administrative law judge in the utility division to conduct hearings for other state agencies as time allows.

SECTION 11. Amends Section 2003.051, Government Code, as follows:

Sec. 2003.051. ROLE OF REFERRING AGENCY. (a) Creates this subsection from existing text and makes no further change to this subsection.

(b) Requires the referring state agency, if SOAH issues a proposal for decision in a matter referred to SOAH by a state agency, to send to SOAH an electronic copy of the agency's final decision or order in the matter.

SECTION 12. Amends the heading to Subchapter D, Chapter 2003, Government Code, to read as follows:

SUBCHAPTER D. TAX HEARINGS

SECTION 13. Amends the heading to Section 2003.101, Government Code, to read as follows:

Sec. 2003.101. TAX HEARINGS.

SECTION 14. Amends Sections 2003.101(a), (b), (d), and (i), Government Code, as follows:

(a) Requires SOAH to conduct hearings relating to contested cases involving the collection, receipt, administration, and enforcement of taxes, fees, and other amounts as prescribed by Section 111.00455 (Contested Cases Conducted by State Office of Administrative Hearings), Tax Code, rather than requires SOAH to establish a tax division (division) to conduct such hearings.

(b) Provides that an administrative law judge who presides at a tax hearing is classified as a "master administrative law judge II," rather than provides that an administrative law judge in the tax division is classified as a "master administrative law judge II."

(d) Requires an administrative law judge, to be eligible to preside at a tax hearing, rather than tax division hearing, including a temporary administrative law judge contracted with under Section 2003.043 (Temporary Administrative Law Judge), to:

(1) and (2) Makes no change to these subdivisions;

(3) Makes a nonsubstantive change; and

(4) have substantial experience in tax cases in making the record suitable for administrative review, rather than for administrative review or otherwise.

Deletes existing Subdivision (5) requiring an administrative law judge, to be eligible to preside at a tax division hearing including a temporary administrative law judge contracted with under Section 2003.043, to have devoted at least 75 percent of the person's legal practice to Texas state tax law in at least five of the

past 10 years before the date on which the person begins employment in the tax division.

(i) Deletes a reference to an administrative law judge in the tax division.

SECTION 15. Amends Sections 2003.103(a) and (b), Government Code, to change references to the tax division to SOAH.

SECTION 16. Amends the heading to Section 2003.104, Government Code, to read as follows:

Sec. 2003.104. CONFIDENTIALITY OF TAX HEARING INFORMATION.

SECTION 17. Amends the heading to Section 2003.105, Government Code, to read as follows:

Sec. 2003.105. TAX HEARINGS FEE.

SECTION 18. Amends Section 2003.109, Government Code, as follows:

Sec. 2003.109. RULES; EARLY REFERRAL. (a) Authorizes the comptroller of public accounts of the State of Texas (comptroller) to adopt rules to provide for the referral to SOAH, rather than the tax division, of issues related to a case described by Section 111.00455, Tax Code, to resolve a procedural or other preliminary dispute between the comptroller and a party.

(b) Changes references to the tax division to SOAH.

SECTION 19. Amends the heading to Section 111.00455, Tax Code, to read as follows:

Sec. 111.00455. CONTESTED CASES CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.

SECTION 20. Amends Sections 111.00455(a) and (c), Tax Code, to delete references to the tax division of SOAH.

SECTION 21. Amends Section 524.032(b), Transportation Code, as follows:

(b) Requires that a hearing be rescheduled if, before the fifth day before the date scheduled for the hearing, a request for a continuance from the person who requested the hearing is received in accordance with the memorandum of understanding adopted under Section 524.033(c), rather than requires that a hearing be rescheduled if, before the fifth day before the date scheduled for the hearing, the Department of Public Safety of the State of Texas (DPS) receives a request for a continuance from the person who requested the hearing. Requires that the hearing, unless both parties agree otherwise, be rescheduled for a date not earlier than the fifth day after the date the request for continuance is received, rather than requires the hearing, unless both parties agree otherwise, be rescheduled for a date not earlier than the fifth day after the date DPS receives the request for the continuance.

SECTION 22. Amends Section 524.033, Transportation Code, by adding Subsections (c) and (d), as follows:

(c) Requires DPS and chief administrative law judge of SOAH to adopt and at least biennially update a memorandum of understanding establishing that SOAH has primary scheduling responsibility for a hearing under this subchapter. Requires that the memorandum of understanding, at a minimum:

(1) set out the roles and responsibilities of SOAH and DPS in scheduling a hearing under this subchapter, including which agency is responsible for scheduling each stage of a hearing;

(2) ensure that SOAH and DPS have timely access to scheduling and continuance information; and

(3) provide for the transfer of funding for DPS employees responsible for scheduling hearings under this subchapter from DPS to SOAH when SOAH assumes responsibility for initial scheduling of hearings under this subchapter.

(d) Requires SOAH and DPS to consult with the Department of Information Resources and the Office of Court Administration of the Texas Judicial System in developing any information technology solutions needed to complete the transfer of scheduling responsibilities, as outlined in the memorandum of understanding adopted under Subsection (c).

SECTION 23. Amends Section 14.052(a), Utilities Code, to require the Public Utilities Commission of Texas (PUC) to adopt and enforce rules governing practice and procedure before PUC and, as applicable, practice and procedure before SOAH, rather than before the utility division of SOAH.

SECTION 24. Amends Sections 14.053(a) and (b), Utilities Code, to delete references to the utility division of SOAH.

SECTION 25. Amends Sections 102.006(a), (b), (c), and (e), Utilities Code, as follows:

(a) Requires the Railroad Commission of Texas (railroad commission) by rule to provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by SOAH, rather than or by the utility division of SOAH. Requires that the rules provide for a railroad commission hearings examiner or SOAH, rather than or the utility division of SOAH, to conduct each hearing in a contested case that is not conducted by one or more members of the railroad commission.

(b) Deletes a reference to the utility division of SOAH.

(c) Deletes a reference to the utility division of SOAH.

(e) Requires SOAH, if the legislature does not appropriate money for the payment of a fixed annual rate under this section, to charge the railroad commission an hourly rate set by SOAH under Section 2003.024(a), Government Code, for hearings conducted by SOAH under this section, rather than charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by SOAH under this section.

SECTION 26. Repealers: Sections 2003.049(k) (requiring that hearings conducted for PUC by SOAH be held in hearing rooms provided by PUC) and (l) (requiring SOAH to charge PUC a fixed annual fee rather than an hourly rate for certain services), Government Code.

Repealer: Section 2003.101(c) (authorizing an administrative law judge in the tax division, if here are no cases in the tax division, and subject to the prior approval of the comptroller, to conduct certain hearing for other state agencies), Government Code.

Repealer: Section 2003.102 (Sunset Provision), Government Code.

Repealer: Section 2003.106 (Comptroller's Priorities and Public Policy Needs), Government Code.

Repealer: Section 2003.107 (Tax Division Review), Government Code.

SECTION 27. (a) Provides that Section 2001.058(d-1), Government Code, as added by this Act, applies only to a hearing conducted by SOAH on or after September 1, 2015.

(b) Requires SOAH to develop and submit a legislative appropriations request in accordance with Section 2003.024, Government Code, as amended by this Act, beginning with SOAH's legislative appropriations request for the 2018-2019 state fiscal biennium.

(c) Provides that Section 2003.024, Government Code, as amended by this Act, applies only to a contract entered into on or after the effective date of this Act. Makes application of this Act prospective.

(d) Requires DPS and the chief administrative law judge of SOAH to adopt an initial memorandum of understanding under Section 524.033(c), Transportation Code, as added by this Act, not later than September 1, 2016.

SECTION 28. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2015.

(b) Effective date, Section 524.032(b), Transportation Code, as amended by this Act: September 1, 2016.