

BILL ANALYSIS

Senate Research Center
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S.B. 226
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Any person wishing to store, take, or divert surface water for a beneficial use (e.g., domestic, agricultural, or recreational purposes) must apply for a water right with the Texas Commission on Environmental Quality (TCEQ). Once approved by TCEQ, a right holder must use the water precisely in the manner described by the permit. If a person wants to amend their water right to alter its place or purpose of use, diversion point, or other provisions within the permit, then they must submit an application for those changes to TCEQ. Like new water rights applications, those for water rights amendments are subject to extensive public notice requirements, and must undergo technical review by the agency. Further, these applications may be subject to contested case hearings, especially if the proposed change to the existing water right affects other water permits or the environment.

Interested parties observe that the application process for a water right amendment can be costly and lengthy. These parties further observe that some water rights amendments are simple, such as changing the physical location of a diversion point by a small distance, and have no bearing on other rights within a river basin or the environment. As an alternative to the lengthy application process, interested parties observe that minor, technical water rights amendments could be exempted from several procedural requirements.

S.B. 226 exempts certain types of limited water rights amendments from the notice, review, and hearing requirements applicable to all applications. The bill identifies three types of water rights amendments that would be exempt from these requirements. Those include amendments that add a purpose of use that does not change a non-consumptive right to a consumptive right or alter a pattern of use in a permit, add a place of use within the same basin, or change a diversion point within a continuous tract of land.

As proposed, S.B. 226 amends current law relating to the procedure for action on certain applications for an amendment to a water right.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.122, Water Code, by adding Subsection (b-1), as follows:

(b-1) Exempts an application for an amendment to a water right from any requirements of a statute or Texas Natural Resource Conservation Commission (TNRCC) rule regarding notice and hearing or technical review by the executive director or TNRCC, and prohibits an application from being referred to the State Office of Administrative Hearings for a contested hearing if the application is for an amendment that:

(1) adds a purpose of use that does not alter the nature of the right from a right authorizing nonconsumptive use to a right authorizing consumptive use, or a pattern of use that is explicitly authorized by the original right;

(2) adds a place of use located in the same basin as the place of use authorized by the original right; or

(3) changes the point of diversion, provided that:

(A) the authorized rate of diversion is not increased;

(B) the original and new points of diversion are located in the same contiguous tract of land;

(C) the original and the new points of diversion are from the same source supply;

(D) there are no points of diversion from the same source of supply associated with other water rights that are located between the original and the new points of diversion; and

(E) there are no streamflow gauges located on the source of supply between the original and new points of diversion.

SECTION 2. Provides that this Act applies to an application to amend a water right that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act or is pending as of the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2017.