

BILL ANALYSIS

C.S.H.B. 2154
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 various state agencies and local political subdivisions. SOAH is subject to review but not abolishment under the Texas Sunset Act. The Legislature also required the Sunset Advisory Commission to conduct a separate special purpose review of SOAH's tax division, which will be abolished and revert back to the Comptroller of Public Accounts on September 1, 2015, unless continued by the Legislature. As a result of its review of SOAH and SOAH's tax division, the Sunset Advisory Commission recommended several statutory modifications that are contained in this legislation.

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

Sunset review provision

C.S.H.B. 2154 requires the State Office of Administrative Hearings (SOAH) to be reviewed under the Texas Sunset Act in 2027 and every twelfth year after 2027.

SOAH's hourly rate and anticipated hourly usage information

C.S.H.B. 2154 provides that an hourly rate set by SOAH is to be set in an amount that sufficiently covers SOAH's full costs in providing services to a state agency, and makes related conforming changes. The bill provides that the hourly rate should be used by the legislature in determining SOAH's legislative appropriations for the biennium. The bill requires SOAH to develop and submit a legislative appropriations request in accordance with anticipated hourly usage and cost estimates for interagency contracts beginning with SOAH's legislative appropriations request for the 2018-2019 state fiscal biennium.

C.S.H.B. 2154 requires a state agency that has entered into a contract with SOAH for the conduct of hearings and alternative dispute resolution procedures for the agency, on a date determined by SOAH before the beginning of each state fiscal biennium, to submit to SOAH and the Legislative Budget Board information regarding the agency's anticipated hourly usage of SOAH's services for each fiscal year of that biennium.

Allows for quarterly payments to SOAH

C.S.H.B. 2154 allows an agency that enters into an interagency contract to pay SOAH for all services provided to the agency to pay a fixed amount at the start of each fiscal quarter of the biennium in lieu of paying a lump-sum amount at the start of each fiscal year of the biennium, as required in current law. The bill specifies this provision applies only to a contract entered into on or after the effective date of the Act. The bill requires SOAH, for an interagency contract under which a quarterly amount is paid by the referring agency to SOAH, to track the agency's actual hourly usage of SOAH's services during each fiscal quarter and forecast, after each fiscal quarter, the agency's anticipated hourly usage for the rest of the fiscal year. The bill requires SOAH to report to the Legislative Budget Board any agency that fails to make a timely payment under the contract. The bill makes related conforming and technical changes.

Provides SOAH with more organizational flexibility and additional information

C.S.H.B. 2154 removes statutory requirements for SOAH to establish a natural resource conservation division, utility division, and tax division, and makes conforming changes throughout the bill. If SOAH issues a proposal for decision in a matter referred to SOAH by a state agency, the bill requires the agency to send an electronic copy of the agency's final decision or order in the matter to SOAH.

Tax hearings

C.S.H.B. 2154 modifies the eligibility requirements for an administrative law judge to preside at a tax hearing by removing the requirement that the administrative law judge must 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; and providing that the judge have substantial experience in tax cases making the record suitable for administrative review, rather than having substantial experience in tax cases making the record suitable for administrative review or otherwise.

C.S.H.B. 2154 repeals the sunset provision for SOAH's tax division. The bill repeals the provision that allows an administrative law judge to conduct hearings for other state agencies if there are no other cases in the tax division and if the tax division provides written notification to and receives prior approval from the comptroller. The bill repeals the requirement that SOAH reimburse the comptroller at an appropriate hourly rate for the time spent by the administrative law judge on the case and the authority of the comptroller to revoke approval for SOAH's tax division judges to conduct hearings for other state agencies at any time.

C.S.H.B. 2154 repeals the requirement that the comptroller provide input to SOAH regarding the comptroller's priorities and public policy needs, and a related provision establishing that this information is specifically intended to assist SOAH in providing efficient service and is not intended to impair SOAH's independence in conducting a hearing. The bill repeals a provision requiring SOAH, on request of the comptroller, to provide the comptroller specified information regarding the tax division.

Administrative license revocation hearings

C.S.H.B. 2154 requires the Department of Public Safety (DPS) and the chief administrative law judge of SOAH to adopt and at least biennially update a memorandum of understanding (MOU) establishing that SOAH has primary scheduling responsibility for an administrative license revocation (ALR) hearing. The bill requires the adoption of an initial MOU not later than September 1, 2016.

C.S.H.B. 2154 requires the MOU, at a minimum, to set out the roles and responsibilities of

SOAH and DPS in scheduling an ALR hearing, including which agency is responsible for scheduling each stage of a hearing; ensure that SOAH and DPS have timely access to scheduling and continuance information; and provide for the transfer of funding for DPS employees responsible for scheduling ALR hearings from DPS to SOAH when SOAH assumes responsibility for initial scheduling of hearings. The bill makes conforming changes that require an ALR hearing to be rescheduled if, before the fifth day before the date scheduled for the hearing, a request for a continuance is received in accordance with the MOU rather than being received by DPS and specifies these changes take effect on September 1, 2016. The bill 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 MOU.

Remanding default cases

C.S.H.B. 2154 authorizes a SOAH administrative law judge, on making a finding that a party to a contested case has defaulted under SOAH rules, to dismiss the case from SOAH's docket and remand it to the referring agency for informal disposition. The bill authorizes the agency, after the case is dismissed and remanded, to informally dispose of the case by applying its own rules or SOAH procedural rules relating to default proceedings. The bill provides that this provision does not apply to a contested case in which the SOAH administrative law judge is authorized to render a final decision and specifies that this provision applies only to a hearing conducted by SOAH on or after September 1, 2015.

Removes outdated provisions related to utility hearings conducted by SOAH for the Public Utility Commission

C.S.H.B. 2154 repeals the requirements that hearings conducted for the Public Utility Commission (PUC) by SOAH be held in hearing rooms provided by PUC, and that PUC provide SOAH's utility division access to its computer systems, databases, and library resources.

C.S.H.B. 2154 repeals the requirement that SOAH charge PUC a fixed annual fee rather than an hourly rate for services rendered, and repeals provisions related to the fee, including requiring the amount of the fee to be based on certain costs and that SOAH and PUC negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with PUC's legislative appropriations request. The bill repeals the provision that prohibits the amount of the fee from being less than the amount appropriated to PUC in the General Appropriations Act for payment to SOAH's utility division to conduct PUC hearings.

Repealers

The bill repeals the following provisions of the Government Code:

- Sections 2003.049(k) and (l)
- Section 2003.101(c)
- Section 2003.102
- Section 2003.106
- Section 2003.107

EFFECTIVE DATE

Except as otherwise provided, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2154 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 2001.058, Government Code, is amended.

SECTION 2. Section 2003.023, Government Code, is amended.

SECTION 3. Section 2003.024, Government Code, is amended by amending Subsections (a), (a-2), (c), and (d) and adding Subsections (a-3) and (a-4) to read as follows:

(a) If a state agency 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 and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not to be paid by appropriations to the office during a state fiscal biennium, the office and the agency shall enter into an interagency contract for the biennium under which the referring agency pays the office 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~~[, a lump-sum amount to cover the costs of]~~ conducting all hearings and procedures for the agency during the fiscal year. The office shall report to the Legislative Budget Board any agency that fails to make a timely payment under the contract. The lump-sum or quarterly amount paid to the office under the contract must be based on:

- (1) an hourly rate that is set by the office;
 - (A) in an amount that sufficiently covers the office's full costs in conducting a hearing or procedure for 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 the office's legislative appropriations request for the biennium, in determining the office's legislative appropriations for the biennium; and
- (2) the anticipated hourly usage of the office's services by the referring agency for

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

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

(a) If a state agency 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 and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not to be paid by appropriations to the office during a state fiscal biennium, the office and the agency shall enter into an interagency contract for the biennium under which the referring agency pays the office 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~~[, a lump-sum amount to cover the costs of conducting all hearings and procedures]~~ during the fiscal year. The office shall report to the Legislative Budget Board any agency that fails to make a timely payment under the contract. The lump-sum or quarterly amount paid to the office under the contract must be based on:

- (1) an hourly rate that is set by the office;
 - (A) in an amount that sufficiently covers the office'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 the office's legislative appropriations request for the biennium, in determining the office's legislative appropriations for the biennium; and
- (2) the anticipated hourly usage of the office's services by the referring agency for

each fiscal year of the biennium, as estimated by the office under Subsection (a-1).

(a-2) The office, for a contract entered into as provided by Subsection (a):

(1) may only require the referring agency to make an additional payment to the office if the agency's actual hourly usage of the office's services is greater than the agency's anticipated hourly usage of the office's services as estimated under Subsection (a-1) for a fiscal year by more than 10 percent; and

(2) is only required to reimburse the referring agency if the agency's actual hourly usage of the office's services is less than the agency's anticipated hourly usage of the office's services as estimated under Subsection (a-1) for a fiscal year by more than 10 percent.

(a-3) The office, for a contract entered into as provided under Subsection (a) under which a quarterly amount is paid by the referring agency to the office, shall:

(1) track the agency's actual hourly usage of the office's services during each fiscal quarter and forecast, after each fiscal quarter, the agency's anticipated hourly usage for the rest of the fiscal year; and

(2) make adjustments to the quarterly amount if the office forecasts under Subdivision (1) that the agency's actual hourly usage of the office's services will differ from anticipated hourly usage of the office's services estimated under Subsection (a-1) by 10 percent or more at the end of the fiscal year.

(a-4) 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, the referring agency shall pay the office the costs of conducting hearings or procedures

each fiscal year of the biennium, as estimated by the office under Subsection (a-1).

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

(1) track the agency's actual hourly usage of the office'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) 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, the referring agency shall pay the office the costs of conducting hearings or procedures

(1) track the agency's actual hourly usage of the office'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) 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, the referring agency shall 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.

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall 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 the office; and

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

(A) the salaries of its administrative law judges;

(B) the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) the administrative costs of the office, including docketing costs ~~[and the administrative costs of the division of the office that conducts the hearing or procedure]~~.

(d) This section does not apply to hearings conducted:

(1) under Section 2003.047 or 2003.049 ~~[by the natural resource conservation division or the utility division]~~; or

(2) under the administrative license revocation program.

SECTION 4. Subchapter B, Chapter 2003, Government Code, is amended.

SECTION 5. Section 2003.0421(c), Government Code, is amended.

SECTION 6. The heading to Section 2003.047, Government Code, is amended.

SECTION 7. Sections 2003.047(a), (b), and (c), Government Code, are amended.

SECTION 8. Section 2003.048, Government Code, is amended.

SECTION 9. The heading to Section 2003.049, Government Code, is amended.

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.

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall 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 the office; and

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

(A) the salaries of its administrative law judges;

(B) the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) the administrative costs of the office, including docketing costs ~~[and the administrative costs of the division of the office that conducts the hearing or procedure]~~.

(d) This section does not apply to hearings conducted:

(1) under Section 2003.047 or 2003.049 ~~[by the natural resource conservation division or the utility division]~~; or

(2) under the administrative license revocation program.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Sections 2003.049(a), (b), (c), (k), and (l), Government Code, are amended to read as follows:

(a) The office shall ~~[establish a utility division to]~~ perform ~~[the]~~ contested case hearings for the Public Utility Commission of Texas as prescribed by the Public Utility Regulatory Act of 1995 and other applicable law.

(b) The office ~~[utility division]~~ shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate the responsibility to hear any other matter before the commission if consistent with the duties and responsibilities of the office ~~[division]~~.

(c) ~~[Only an administrative law judge in the utility division may conduct a hearing on behalf of the commission. An administrative law judge in the utility division may conduct hearings for other state agencies as time allows.]~~ The office may ~~[transfer an administrative law judge into the division on a temporary or permanent basis and may]~~ contract with qualified individuals to serve as temporary administrative law judges as necessary.

(k) Hearings conducted for the commission by the office shall be held in hearing rooms provided by the commission. The commission shall also provide the office ~~[utility division]~~ access to its computer systems, databases, and library resources.

(l) The office shall charge the commission a fixed annual fee rather than an hourly rate for services rendered ~~[by the utility division]~~ to the commission. The amount of the fee may not be less than the amount appropriated to the commission in the General Appropriations Act for payment to the office ~~[utility division]~~ to conduct commission hearings. The amount of the fee shall 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 the office ~~[including the administrative costs of the utility division]~~. The office and the commission shall negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with the commission's legislative appropriations

SECTION 10. Sections 2003.049(a), (b), and (c), Government Code, are amended to read as follows:

(a) The office shall ~~[establish a utility division to]~~ perform ~~[the]~~ contested case hearings for the Public Utility Commission of Texas as prescribed by the Public Utility Regulatory Act of 1995 and other applicable law.

(b) The office ~~[utility division]~~ shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate the responsibility to hear any other matter before the commission if consistent with the duties and responsibilities of the office ~~[division]~~.

(c) ~~[Only an administrative law judge in the utility division may conduct a hearing on behalf of the commission. An administrative law judge in the utility division may conduct hearings for other state agencies as time allows.]~~ The office may ~~[transfer an administrative law judge into the division on a temporary or permanent basis and may]~~ contract with qualified individuals to serve as temporary administrative law judges as necessary.

request.

SECTION 11. Section 2003.051, Government Code, is amended.

SECTION 11. Same as introduced version.

SECTION 12. The heading to Subchapter D, Chapter 2003, Government Code, is amended.

SECTION 12. Same as introduced version.

SECTION 13. The heading to Section 2003.101, Government Code, is amended.

SECTION 13. Same as introduced version.

SECTION 14. Sections 2003.101(a), (b), (d), and (i), Government Code, are amended.

SECTION 14. Same as introduced version.

SECTION 15. Sections 2003.103(a) and (b), Government Code, are amended.

SECTION 15. Same as introduced version.

SECTION 16. The heading to Section 2003.104, Government Code, is amended.

SECTION 16. Same as introduced version.

SECTION 17. The heading to Section 2003.105, Government Code, is amended.

SECTION 17. Same as introduced version.

SECTION 18. Section 2003.109, Government Code, is amended.

SECTION 18. Same as introduced version.

SECTION 19. The heading to Section 111.00455, Tax Code, is amended.

SECTION 19. Same as introduced version.

SECTION 20. Sections 111.00455(a) and (c), Tax Code, are amended.

SECTION 20. Same as introduced version.

SECTION 21. Section 524.032(b), Transportation Code, is amended.

SECTION 21. Same as introduced version.

SECTION 22. Section 524.033, Transportation Code, is amended.

SECTION 22. Same as introduced version.

SECTION 23. Section 14.052(a), Utilities Code, is amended.

SECTION 23. Same as introduced version.

SECTION 24. Sections 14.053(a) and (b), Utilities Code, are amended.

SECTION 24. Same as introduced version.

SECTION 25. Sections 102.006(a), (b), (c), and (e), Utilities Code, are amended.

SECTION 25. Same as introduced version.

SECTION 26. The following provisions of the Government Code are repealed:

SECTION 26. The following provisions of the Government Code are repealed:

- (1) Section 2003.101(c);
- (2) Section 2003.102;

- (1) Sections 2003.049(k) and (l);
- (2) Section 2003.101(c);
- (3) Section 2003.102;

- (3) Section 2003.106; and
- (4) Section 2003.107.

SECTION 27. (a) Section 2001.058(d-1), Government Code, as added by this Act, applies only to a case referred to the State Office of Administrative Hearings on or after September 1, 2015.

(b) The State Office of Administrative Hearings shall develop and submit a legislative appropriations request in accordance with Section 2003.024, Government Code, as amended by this Act, beginning with the office's legislative appropriations request for the 2018-2019 state fiscal biennium.

(c) 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. A contract entered into before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Not later than September 1, 2016, the Texas Department of Transportation and the chief administrative law judge of the State Office of Administrative Hearings shall adopt an initial memorandum of understanding under Section 524.033(c), Transportation Code, as added by this Act.

SECTION 28. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2015.

(b) Section 524.032(b), Transportation Code, as amended by this Act, takes effect September 1, 2016.

- (4) Section 2003.106; and
- (5) Section 2003.107.

SECTION 27. (a) Section 2001.058(d-1), Government Code, as added by this Act, applies only to a hearing conducted by the State Office of Administrative Hearings on or after September 1, 2015.

(b) The State Office of Administrative Hearings shall develop and submit a legislative appropriations request in accordance with Section 2003.024, Government Code, as amended by this Act, beginning with the office's legislative appropriations request for the 2018-2019 state fiscal biennium.

(c) 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. A contract entered into before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Not later than September 1, 2016, the Department of Public Safety and the chief administrative law judge of the State Office of Administrative Hearings shall adopt an initial memorandum of understanding under Section 524.033(c), Transportation Code, as added by this Act.

SECTION 28. Same as introduced version.