

## **BILL ANALYSIS**

H.B. 2179  
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Natural Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties suggest that the current process for obtaining a permit from a groundwater conservation district lacks standard components of administrative processes that are designed to ensure a clear and fair resolution. H.B. 2179 seeks to address this issue.

### **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**

H.B. 2179 amends the Water Code to specify that the groundwater conservation district hearing on a permit or permit amendment application that a district's general manager or board may schedule is a public hearing. The bill authorizes a groundwater conservation district's board to take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The bill authorizes the board to issue a written order to grant the application, grant the application with special conditions, or deny the application. The bill requires the board to schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with applicable district rules and authorizes the preliminary hearing to be conducted by a quorum of the board, by an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing, or by the State Office of Administrative Hearings (SOAH). The bill requires the board, following a preliminary hearing, to determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. The bill authorizes the board to take any action authorized for an uncontested application if the board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised. The bill authorizes an applicant, not later than the 20th day after the date the board issues an order granting the application, to demand a contested case hearing if the order includes special conditions that were not part of the application as finally submitted or grants a maximum amount of groundwater production that is less than the amount requested in the application.

H.B. 2179 authorizes the presiding officer of a hearing to determine how to apportion among the parties the costs related to a contract for the services of a presiding officer and the preparation of the official hearing record. The bill, in a provision of law requiring the presiding officer to submit a report to the board not later than the 30th day after the date a hearing is concluded,

replaces the report with a proposal for decision and specifies such a hearing as the evidentiary hearing. The bill removes a person who provided comments as a recipient of a copy of the proposal for decision provided by the presiding officer or general manager. The bill requires the board to consider the proposal for decision at a final hearing and prohibits additional evidence from being presented during such a hearing. The bill authorizes the parties to present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. The bill provides for the continuance of a final hearing.

H.B. 2179 removes the authority of an applicant in a contested or uncontested hearing on an application or a party to a contested hearing to administratively appeal a decision of the board on a permit or permit amendment application by requesting a rehearing before the board. The bill removes a person who provided comments as a recipient of a certified copy of requested board findings and conclusions regarding a decision of the board on a permit or permit amendment application. The bill removes the specification that the rehearing a party to a contested hearing may request be a rehearing before the board.

H.B. 2179 requires a district, in adopting procedural rules regarding the notice and hearing process for permit and permit amendment applications, to establish the deadline for a person who may participate in a hearing on a contested application to file in the manner required by the district a protest and request for a contested case hearing.

H.B. 2179 requires an administrative law judge who conducts a contested case hearing before SOAH to consider applicable district rules or policies in conducting the hearing but prohibits the district deciding the case from supervising the administrative law judge. The bill requires a district to provide the administrative law judge with a written statement of applicable rules or policies. The bill prohibits a district from attempting to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument. The bill removes the specification that in a proceeding for a permit application or amendment in which a district has contracted with SOAH for a contested case hearing the board's authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge be consistent with Administrative Procedure Act provisions regarding a hearing conducted by SOAH. The bill authorizes a board to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative judge, only if the board determines that the administrative law judge did not properly apply or interpret applicable law, district rules, applicable written policies, or prior administrative decisions; that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or that a technical error in a finding of fact should be changed.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.