

- SUBJECT:** Allowing a water permit applicant to refer a contested case to SOAH
- COMMITTEE:** Natural Resources — committee substitute recommended
- VOTE:** 10 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, D. Miller, Price
- 0 nays
- 1 absent — Martinez Fischer
- WITNESSES:** For — Steve Kosub, San Antonio Water System; Dean Robbins, Texas Water Conservation Association; Gregory Ellis; (*Registered, but did not testify*: Harvey Everheart, Mesa Underground Water Conservation District; C.E. Williams, Panhandle Groundwater Conservation District; Luana Buckner, Texas Water Conservation Association and Medina County Groundwater Conservation District; Jim Conkwright, High Plains Underground Water Conservation District No. 1; John Burke)
- Against — None
- BACKGROUND:** Under current law, a groundwater district may contract with the State Office of Administrative Hearings (SOAH) to conduct an appeal for decision on a water permit, but is not obligated to do so.
- DIGEST:** CSHB 1825 would require a groundwater conservation district to contract with SOAH to conduct a hearing if requested by an applicant or other party to a contested case.
- CSHB 1825 would require the party requesting the hearing to pay all costs associated with the contract for the hearing and to pay the district a sufficient deposit before the hearing began. The district would have to refund any excess money.
- The district board of directors would have the authority to make a final decision after considering the proposal issued by SOAH.
- The district could adopt rules for the hearing that were consistent with the procedural rules of SOAH. The district would have to adopt rules to:

- establish a procedure for preliminary and evidentiary hearings;
- allow the presiding officer, at a preliminary hearing by the district and before a referral of the case to SOAH, to determine a party's right to participate in a hearing; and
- set a deadline for a party to file a request to refer a contested case to SOAH.

If the district did not prescribe a deadline by rule, the applicant would have to request the hearing no later than 14 days before the evidentiary hearing. The hearing would have to be held in Travis County or at the district office or the board's regular meeting location. The district would have to choose the location.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would apply only to a permit or permit amendment application determined to be complete on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 1825 would require a groundwater conservation district to contract with SOAH to conduct an evidentiary hearing if requested by a permit applicant or any other party to a contested case hearing. This would provide objectivity and balance in the permitting and regulatory process by giving parties an objective, independent hearing examiner.

As the state's population continues to grow and the use of surface water becomes more limited, groundwater permit applications will likely be more frequently contested. CSHB 1825 would allow larger, more difficult contested cases to be handled by SOAH, which has experienced, professional hearing examiners who could better handle such cases.

The bill also would provide more consistent evidentiary records for groundwater conservation districts that may not have experience with evidentiary rules and trials. The bill would not place an additional burden on the districts because the party requesting the hearing would be required to pay all costs associated with the SOAH contract. It also would preserve respect for the judgment of a local groundwater conservation district by ensuring that the district board retained the authority to make the final decision regarding the permit or permit amendment application. A SOAH hearing could help the district to make a more informed final decision. Groundwater conservation district personnel have stated that although in

some case it might be unnecessary and costly to contract with SOAH, for the sake of fairness it is important that the option be available to permit applicants or any other party.

OPPONENTS
SAY:

The primary objective of a groundwater conservation district is to manage and protect groundwater. Groundwater conservation districts are careful to provide full due process to every permit application. This bill is unnecessary because groundwater conservation districts issue more than 99 percent of their permits without contested case hearings, and they hire a fair and impartial hearing examiner whenever there is a contested case.

Although the bill stipulates that the party requesting the hearing would have to pay all costs associated with the SOAH contract, there are other costs to consider, such as possible travel costs and additional attorneys' fees.

NOTES:

The committee substitute differs from the original by providing that a district "may" rather than "shall" adopt rules for a hearing consistent with those of SOAH. The substitute also would require a request for a hearing before SOAH no later than 14 days before the evidentiary hearing if the district did not prescribe a deadline by rule, whereas the original bill would require a district to contract with SOAH no later than 14 days before the hearing if the district did not prescribe a deadline by rule.

The companion bill, SB 693 by Estes, passed the Senate by 31-0 on April 7 and has been received by the House.