

SUBJECT: Establishing deadlines for processing water rights applications

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Ritter, Ashby, D. Bonnen, Callegari, Keffer, Larson, Martinez Fischer, D. Miller

0 nays

3 absent — Johnson, T. King, Lucio

WITNESSES: For — Michael Booth; (*Registered, but did not testify:* Larry Casto, City of Dallas; Elizabeth Castro, Lyondell Basell; Mark Gipson, Devon Energy; Kinnan Golemon, Shell Oil Co.; David Holt, Permian Basin Petroleum Association; Julie Klumpyan, Valero; Annie Mahoney, Texas Conservative Coalition; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corporation; Steve Perry and Julie Williams, Chevron USA; Matt Phillips, Brazos River Authority; Dean Robbins, Texas Water Conservation Association; Stephanie Simpson, Texas Association of Manufacturers; CJ Tredway, Texas Oil & Gas Association)

Against — Myron Hess, National Wildlife Federation; Ken Kramer, Sierra Club - Lone Star Chapter; (*Registered, but did not testify:* Luke Metzger, Environment Texas; David Weinberg, Texas League of Conservation Voters)

On — (*Registered, but did not testify:* Ron Ellis, Texas Commission on Environmental Quality)

DIGEST: CSHB 3234 would amend the Water Code by creating a statutory water rights application process at the Texas Commission on Environmental Quality (TCEQ).

The bill would establish statutory deadlines for each stage of the water rights application process for both the applicants and TCEQ.

The bill also would limit to certain conditions TCEQ's ability to refer an issue regarding a water rights application to the State Office of

Administrative Hearings (SOAH). If TCEQ granted a request for a hearing, it would determine the number and scope of issues to be referred to SOAH. The hearing's duration would be limited to 270 days.

The bill would prohibit party status from being granted to anyone who did not request it from TCEQ prior to the issue being referred to SOAH.

This 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, 2013.

**SUPPORTERS
SAY:**

CSHB 3234 would establish a defined permitting process and a statutory timeline for issuing water rights permits, and would provide guidance to TCEQ when granting a contested case hearing.

Currently, the permitting process is carried out under TCEQ rules because there is no statute governing it. TCEQ is receiving an increasing number of complex water rights applications, and applicants and the agency alike have complained that the current permitting and hearing processes can drag on for an interminable period. This costly and inefficient system has created a backlog at the agency, as well as uncertainty for developing projects necessary to meet the state's future water needs. Given the demand that the drought and growth in population has placed on surface water, a defined and efficient permitting process would benefit all parties.

CSHB 3234 would improve the permit process for water rights by establishing definite time frames to which parties would have to adhere, while more clearly defining the steps in the process and the roles and responsibilities of each party. While the bill would set hard deadlines for each stage of the process for both the agency and the applicant, the bill also would include flexibility for both parties to extend deadlines if necessary and with good cause. Under the bill's deadlines, the entire permitting process should take no more than 900 days, give or take, before going to SOAH. This would be much faster than the five to 10 years it takes currently to process a water rights application.

The more stringent guidelines and timeframes also should weed out insincere permit applications early in the process, which would allow the agency to focus on the serious applications that need to move through the process quickly because business, industry, and other users were depending on the water.

The bill also would streamline the permitting process by qualifying who could be a party to a contested permit hearing and limiting the scope of issues that would establish a basis for a hearing. These limitations would not preclude the participation of a truly interested party, which likely would be engaged from the beginning. Instead, it would prevent non-vested parties from joining in a contest simply to stall an application.

OPPONENTS
SAY:

CSHB 3234 would set unrealistic deadlines for TCEQ's review of water rights applications, especially in the case of complex water rights or large water projects. This could tie the hands of the TCEQ staff and result in inadequate review and premature issuance of a water right.

The water rights permitting process can be complex and lengthy. It is intended to balance the rights of landowners and existing water rights holders and the needs of the environment with the demands of others seeking to use the state's surface water for various purposes. As an increasing amount of the water in the state's river basins has been appropriated to various users, with many basins fully allocated or even over-allocated, careful scrutiny of any application for new or increased water rights becomes more important. This could tie the hands of the TCEQ staff and result in inadequate review and premature issuance of a water right.

With the prospect for a major expansion of state financial assistance for water projects, Texans need to be assured that where those projects involve surface water held in trust for the public, water rights applications are thoroughly evaluated to make sure that the interests of the public are being protected.

Efforts to streamline the permitting process could actually complicate efforts by landowners and others to be involved in a contested case hearing. The bill would place new limits on the length of a contested case hearing on a water rights permit and on issues that could be raised. It also would prohibit a person who did not request a hearing from being party to it. Even if a person did request a hearing, that person could not be a party unless that person requested a hearing on the specific issues referred to SOAH.

While an efficient permit application and review process is a legitimate goal, an equally legitimate goal is a process that provides a comprehensive

review of an application and consideration of all of its impacts, as well as a fair process that allows all truly affected parties to have their concerns heard and addressed to the extent possible. CSHB 3234 could undermine these necessary elements of the water rights amendment process.

**OTHER
OPPONENTS
SAY:**

Any issues with the water rights permitting process would be best served not by enacting legislation this session but by deferring this topic to an interim study, preferably with the assistance of a diverse but representative group of stakeholders who could put their expertise to work developing a balanced set of improvements to the process.