

- SUBJECT:** Sunset review of the State Office of Administrative Hearings
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Smithee, Farrar, Clardy, Laubenberg, Raymond, Schofield, Sheets, S. Thompson
- 0 nays
- 1 absent — Hernandez
- WITNESSES:** For — (*Registered, but did not testify:* Cyrus Reed, Lone Star Chapter Sierra Club)
- Against — None
- On — (*Registered, but did not testify:* Tom Walston, Kim Dudish, and Cathleen Parsley, State Office of Administrative Hearings; Eric Beverly, Sunset Advisory Commission; Cheryl Garren, Texas Department of Public Safety)
- BACKGROUND:** The State Office of Administrative Hearings (SOAH) was established in 1991 to serve as an unbiased, independent administrative hearing tribunal for the state. SOAH’s main activities include administrative hearings for agencies, license revocation hearings for the Texas Department of Public Safety (DPS), alternative dispute resolution, and tax hearings.
- SOAH conducts hearings for 62 state agencies and local political subdivisions. After SOAH receives a request from a state agency or local governmental entity, it initiates the hearing process and on average completes a case within 100 days. Hearings can vary in length, from a few minutes to several weeks depending on the complexity of the case and any statutory requirements.
- SOAH offers alternative dispute resolution proceedings, such as arbitration and mediation, to parties as a quicker and less expensive

alternative to a full hearing. In 2007, the Legislature transferred to SOAH cases involving disputes between the comptroller's office and taxpayers over the collection, receipt, administration, and enforcement of taxes and fees. Statute requires SOAH to maintain separate tax, utility, and natural resource conservation divisions and dictates special requirements for administrative law judges (ALJs) assigned to the tax division.

The chief ALJ serves as SOAH's executive director and is responsible for agency operations and policymaking because the agency does not have a governing board. The governor appoints the chief ALJ for a two-year term.

SOAH's primary office is located in Austin and it has seven field offices located throughout Texas. SOAH employed an average full-time equivalent of 107 employees in fiscal 2013. Most of the staff are ALJs who preside over the cases and issue proposals for decision. Almost 70 percent of the staff work in Austin, with the rest based in the field offices to conduct hearings at the local level. ALJs' primary responsibility in the field offices is handling administrative license revocation hearings for DPS involving individuals with suspended licenses due to allegedly driving while intoxicated. During fiscal 2013, these hearings accounted for 84 percent of SOAH's cases.

In fiscal 2013, SOAH spent about \$9.1 million. The agency spends the majority of its funds conducting hearings for state agencies. The vast majority of SOAH's revenue comes from three sources almost equally: general revenue, the State Highway Fund for DPS driver's license revocation cases, and interagency contracts.

SOAH last underwent Sunset review in 2002-03. SOAH is subject to review, but not abolishment, every 12 years. Unless continued, the office's authority would expire September 1, 2015.

**DIGEST:**

CSHB 2154 would change the Sunset date of the State Office of Administrative Hearings (SOAH) from 2015 to 2027. It would require SOAH to be reviewed, but not abolished, in 2027 and every 12th year

thereafter.

The bill would make several changes to SOAH, including:

- transferring scheduling responsibility on DPS cases to SOAH;
- adjusting interagency contract payment policies;
- removing the statutory separation of certain SOAH divisions;
- removing the comptroller's authority over and certain requirements for administrative law judges (ALJs) on tax cases;
- adding reporting requirements for referring agencies; and
- providing SOAH additional authority to remand defaulted cases for informal disposition.

**Scheduling responsibility.** The bill would require that DPS transfer to SOAH primary responsibility for scheduling hearings on administrative driver's license suspensions for a driver's failure to pass a test for intoxication. The bill would require DPS and the chief ALJ of SOAH to adopt and update at least biennially a memorandum of understanding establishing that SOAH had primary responsibility. The memorandum of understanding would, at minimum:

- set out the roles and responsibilities of DPS and SOAH in scheduling these hearings, including which agency was responsible for scheduling each stage of the hearing;
- ensure that both DPS and SOAH had timely access to scheduling and continuance information; and
- provide for the transfer of funding from DPS to SOAH for employees responsible for scheduling these hearings once SOAH assumed that responsibility.

A continuance request for a license suspension hearing would be sent in accordance with the terms set by the memorandum of understanding, instead of sent to DPS, as is required under current law. This section would take effect September 1, 2016, the same date by which the memorandum of understanding would have to be adopted.

**Interagency contract payment policies.** Under current law, SOAH can enter into contracts with other state agencies for SOAH's services. The contracts are based on whether the agency had referred matters to SOAH during the past three fiscal years and has complete information available related to the agency's hourly usage of SOAH's services.

The bill would allow the referring agencies that had this information available to pay SOAH for its services in either a lump-sum amount at the beginning of each fiscal year of the biennium, or a fixed amount at the start of each fiscal quarter of the biennium. SOAH would be required to report to the Legislative Budget Board any agency that failed to make a timely payment. If the agency contracted for a quarterly payment schedule, SOAH would be required to track the agency's actual hourly usage of SOAH's services during each fiscal quarter and forecast after each quarter the agency's anticipated hourly usage for the rest of the fiscal year.

The amount to be paid under the interagency contracts described above would be based on an hourly rate set by SOAH to sufficiently cover the office's full costs in providing services to the agency, including the cost to conduct hearings, salaries for ALJs, travel expenses, and administrative expenses. As under current law, the hourly rate would have to be set in time for it to be reviewed as part of SOAH's legislative appropriations request for the biennium. The amount to be paid under the interagency contracts also would be based on the anticipated hourly usage of SOAH's services by the referring agency for each fiscal year of the biennium. The bill would specify that SOAH would use this rate to charge the Railroad Commission for SOAH's services.

Any state agency that had contracted with SOAH to conduct hearings or alternative dispute resolution within the past three fiscal years would be required to submit information regarding the agency's anticipated hourly usage of SOAH's services for each fiscal year of the upcoming biennium. The information would be submitted to the Legislative Budget Board before the start of each biennium on a date chosen by SOAH.

**Statutory separation of SOAH divisions.** The bill would remove the statutory requirements that SOAH maintain separate tax, utility, and natural resource conservation divisions, and would repeal the tax division's separate Sunset date. It would make conforming changes to the language of the statute to reflect these changes. The bill also would update references to the Texas Commission on Environmental Quality, formerly known as the Texas Natural Resource Conservation Commission.

**Comptroller's authority and requirements on tax cases.** The bill would remove the requirement that an ALJ who conducted tax hearings had devoted at least 75 percent of his or her legal practice to Texas state tax law in at least five of the past 10 years before the ALJ began working in the tax division. The bill would continue to allow SOAH to hear contested tax cases.

The bill would remove statutory provisions related to the comptroller's authority over SOAH's tax division. The office would no longer need to get prior approval before allowing an ALJ who primarily worked on tax cases to hear other kinds of cases. The comptroller would no longer have authority to evaluate SOAH's tax division or the ALJs within. Additionally, the comptroller would no longer be required to provide its priorities or policy needs to SOAH.

**Reporting requirements.** The bill would require any referring agency that received a proposal for decision in a case from SOAH to send an electronic copy of the agency's final decision or order in the matter to SOAH.

**Authority to remand defaulted cases.** The bill would allow an ALJ to dismiss a contested case in which a party defaulted and remand it to the referring agency for informal disposition. The referring agency could apply its own rules or the procedural rules of SOAH to informally dispose of the case. An ALJ could not remand a default contested case if the ALJ was authorized to render a final decision in that case.

Except as otherwise provided, the bill would take effect September 1,

2015, and would apply only to hearings conducted or contracts entered into on or after that date.

SUPPORTERS  
SAY:

CSHB 2154 would give the State Office of Administrative Hearings (SOAH) the authority to schedule its own docket, ensure stable funding, remove any appearance of inappropriate influence by the comptroller, and provide SOAH with more information to review and improve its performance.

**Scheduling responsibility.** Under current law, the Department of Public Safety (DPS) sets the initial hearings for administrative license revocations for SOAH. No other referring agency is allowed to schedule SOAH hearing dates unilaterally, and DPS's cases represent the vast majority of hearings that SOAH conducts. This system is inefficient and leads to delays in resetting hearing dates because it is dependent on communication between DPS and SOAH. The bill would move responsibility for scheduling these hearings to SOAH, giving it the control it needs to ensure that field offices are not overwhelmed and that these cases are processed in a timely manner.

While some argue that SOAH's responsibility for scheduling administrative license revocation hearings should be clear in statute, the memorandum of understanding between DPS and SOAH would be adequate to ensure SOAH's control over these cases. The memorandum also would give the agencies flexibility in working out their system for scheduling these cases. As the transition of responsibility occurs, there will be unforeseen issues that arise, and the agencies could work out solutions within the memorandum instead of being tied to statutory language that might not address the issues adequately.

Additionally, SOAH does not need primary control over continuance requests for these license revocation cases because scheduling changes more directly affect DPS, as it is DPS officers who are subpoenaed to appear at the hearings. DPS needs that information as soon as it is available to update its employees on hearings instead of relying on SOAH for the information. The number of continuance requests is very large —

there were about 18,000 in fiscal 2013 — and DPS already is experienced in handling those requests, making it the better choice for this responsibility. The bill would require the memorandum of understanding to ensure that both SOAH and DPS had access to timely information of continuances, making it unnecessary for SOAH to take over these responsibilities.

**Interagency contract payment policies.** The bill would stabilize SOAH's funding by updating its billing processes with referring agencies. SOAH's current system largely is based on monthly invoices to referring agencies for SOAH's services, which are due a month later. This creates a two-month delay for SOAH to receive payments, and agencies sometimes do not pay the invoices on time, making funding unpredictable for the office.

The bill would authorize agencies to pay SOAH either in one lump-sum payment at the beginning of the fiscal year, or quarterly, based on projections for the amount they would most likely owe SOAH for services that year. SOAH also would be required to report to the Legislative Budget Board any agency that did not make timely payments under its contract. This would stabilize SOAH's funding and ensure that the agency could cover its expenses, such as payroll, and not have to worry about agencies paying late.

This bill would not be the appropriate avenue to address concerns about the office's budget sources, such as whether SOAH should receive more general revenue instead of relying on interagency contracts. That issue would be better decided when SOAH's funding was next appropriated.

**Statutory separation of SOAH divisions.** The bill would give SOAH more flexibility and information to better manage itself to efficiently dispose of cases. Up to now, SOAH has been required to maintain separate divisions for tax, utility, and natural resource conservation cases because the office did not have the expertise needed to handle those cases effectively when the office was originally formed. SOAH has since obtained this expertise, making the requirement for three separate

divisions unnecessary. The bill would give SOAH the ability to reorganize and shift resources to deal with changing workload demands.

Additionally, the separate Sunset date for the tax division would be removed because it no longer would be necessary. SOAH handles tax cases effectively, and its performance in handling those cases should be reviewed along with the rest of the agency's performance.

**Comptroller's authority and requirements on tax cases.** The bill would remove the appearance of undue influence over SOAH by the comptroller. When SOAH took over hearing tax cases involving the comptroller's office, certain statutory provisions were introduced that gave the comptroller some oversight over SOAH's tax division, such as the ability to evaluate ALJs who heard tax cases. These provisions rarely are used, but their existence could give the appearance to taxpayers involved in these cases of inappropriate influence by the comptroller. In order to extinguish doubts about SOAH's impartiality, the bill would remove these provisions and the comptroller's ability to exercise power over SOAH's tax cases.

**Reporting requirements.** The bill would require referring agencies to send copies to SOAH of their final orders on cases referred to the office so that SOAH could have a better understanding of how many times agencies overturned its decisions and also have clear records about when a case was closed. This information would help SOAH review and evaluate its performance and identify trends or areas for improvement.

**Authority to remand defaulted cases.** The bill would authorize referring agencies to informally dispose of default contested cases remanded from SOAH. Currently, some agencies do not have clear statutory authority to informally dispose of these cases when SOAH remands them back to the agency. This is inefficient because it requires an ALJ to issue a formal proposal for decision when the case cannot be informally disposed of by the referring agency. Time and resources could be saved if the ALJ were able to return the case to the referring agency. The bill would clarify that agencies that do not have clear statutory authority to informally dispose of



these cases could use SOAH's procedural rules for disposition.

OPPONENTS  
SAY:

CSHB 2154 would not fix the inefficient system used by DPS for scheduling administrative license revocation hearings and continuance requests. SOAH's responsibility for those duties should be clearly laid out in statute, not dependent on a memorandum of understanding between DPS and SOAH. These hearings represented 84 percent of SOAH's cases in fiscal 2013 and are the only cases over which SOAH does not have primary scheduling power. SOAH should be provided authority in statute to control hearing schedules because it is SOAH's employees that are affected by those schedules.

Under current law, DPS sets initial five-day continuances available to drivers for these hearings. This system is problematic because it relies on DPS and SOAH communicating with one another, which sometimes does not happen. When continuation requests are not communicated to SOAH, the hearings proceed, but no parties attend. That is a waste of SOAH's time and resources. SOAH should be responsible for continuance requests because they greatly affect SOAH's employees and schedules.

The bill would continue to use the inefficient interagency contract system to provide one-third of SOAH's funding. SOAH instead should be funded through general revenue because it would simplify the process and stabilize SOAH's funding. Instead of agencies receiving funds through appropriations to pay for SOAH's services and then sending that money to SOAH, the intermediate step should be removed and SOAH's funds should be appropriated directly to the agency. This would remove the concern about agencies making late payments and SOAH being unable to cover expenses such as payroll.

NOTES:

The companion bill, SB 216 by Birdwell, was referred to the Senate Committee on State Affairs on March 10.