

SUBJECT: Removing requirements for certain water permit amendment applications

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, T. King, Lang, Nevárez, Oliverson

1 nay — Ramos

1 absent — Price

WITNESSES: For — Dean Robbins, Texas Water Conservation Association (*Registered, but did not testify*: Daniel Womack, Dow Chemical; Tom Oney, Lower Colorado River Authority; Brian Sledge, San Antonio River Authority; Mark Vickery, Texas Association of Manufacturers; Justin Yancy, Texas Business Leadership Council; Sam Gammage, Texas Chemical Council; Ryan Skrobarczyk, Texas Nursery and Landscape Association; Heather Harward, Texas Water Supply Partners)

Against — (*Registered, but did not testify*: Cyrus Reed, Sierra Club Lone Star Chapter; Adrian Shelley, Public Citizen)

On — (*Registered, but did not testify*: Charles Flatten, Hill Country Alliance; Kimberly Nygren, Texas Commission on Environmental Quality)

BACKGROUND: Water Code sec. 11.122 requires holders of permits, certified filings, and certificates of adjudication for water rights to obtain permission from the Texas Commission on Environmental Quality (TCEQ) to alter a water right. Amendments to water rights, other than amendments that would increase the amount or rate of water to be diverted, are approved if they will not adversely impact other water right holders or the environment on a stream more than current use.

Water Code sec. 11.132 requires notice be given to all individuals who could be affected by the issuance of a water right permit. Sec. 11.133

requires TCEQ to hold a hearing on the application for a water permit.

DIGEST:

HB 1964 would exempt certain applications for an amendment to a water right that otherwise met the requirements of Water Code sec. 11.122 from any requirements of a statute or Texas Commission on Environmental Quality (TCEQ) rule regarding notice and hearing or technical review by the TCEQ.

Such applications could not be referred to the State Office of Administrative Hearings for a contested case hearing if the executive director of TCEQ determined after an administrative review that the application was for an amendment that would:

- add a purpose of use that did not substantially alter the nature of the right from nonconsumptive to consumptive use or a pattern of use that was explicitly authorized in or required by the original right; or
- add a place of use located in the same basin as the original right.

An application also could not be referred for a hearing if it was for an amendment that would change the point of diversion, provided that:

- it would not increase the authorized rate of diversion;
- the original and new points of diversion were on the same contiguous tract of land and from the same supply source;
- there were no points of diversion from the same supply source associated with other water rights located between the original and new points of diversion;
- there were no streamflow gauges between the original and new points of diversion referenced in the original or other water right authorizing a diversion from the same source of supply; and
- there were no tributary watercourses that entered the watercourse that was the source of supply located between the original and new points of diversion.

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, 2019, and would apply only to applications for amendments to water rights filed with TCEQ or pending on or after the effective date of the bill.

**SUPPORTERS
SAY:**

HB 1964 would improve the efficiency of the Texas Commission on Environmental Quality (TCEQ) by streamlining the water rights permitting process for minor water rights amendments. The bill also would provide relief to individuals seeking to make amendments to existing water right permits by eliminating the need to go through a lengthy and costly process.

The bill would help streamline the TCEQ process by giving the commission the ability to focus on reviewing more technical cases. It would focus specifically on minor water rights amendments that would not adversely impact the environment or water rights of other permit holders and would not grant unchecked latitude for water right holders to apply for permit amendments without notice and hearings or technical review.

Currently, the amendment process for water right permits is lengthy and costly. The bill would alleviate the burden placed on permit holders by removing the need for this process for minor permit amendments.

**OPPONENTS
SAY:**

HB 1964 could adversely impact the natural resources of water rights permit holders other than the permit holder applying for an amendment by creating an overly broad list of exceptions to the public notice, hearing, and technical review requirements.

The bill could lead to adverse environmental impacts by removing the safeguards of public notice and hearings on a water permit amendment application. Because many surface water rights are granted by the Texas Commission on Environmental Quality in perpetuity, the bill could have long-lasting impacts on natural resources and the environment that could be avoided if the application were required to adhere to the notice, hearing, and technical review process.