

BILL ANALYSIS

Senate Research Center

H.B. 3234
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Natural Resources
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that current law does not provide a complete and consolidated statutory timeframe for processing and reviewing an application for a permit to use state water or a permit amendment. H.B. 3234 seeks to address this issue by establishing provisions relating to the procedure for action by the Texas Commission on Environmental Quality on an application for a water right.

H.B. 3234 amends current law relating to the procedure for action by the Texas Commission on Environmental Quality on an application for a water right.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Section 11.129, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.129, Water Code, as follows:

Sec. 11.129. New heading: REVIEW OF APPLICATION. (a) Defines “administratively complete” and “technical review” in this section.

(b) Requires the executive director of the Texas Natural Resource Conservation Commission (executive director), not later than the 30th working day after the date the executive director receives an application, to review the application and provide to the applicant:

(1) written notice that the application is administratively complete; or

(2) a written request for information that describes in detail the information that the applicant is required to provide in order for the application to be considered administratively complete.

(c) Requires the applicant, not later than the 30th day after the date an applicant receives a request under Subsection (b)(2), to submit a response to the request. Requires the executive director, not later than the 30th working day after the date the executive director receives a timely response, to review the response and provide to the applicant:

(1) written notice that the application is administratively complete; or

(2) a written request for information that describes in detail the information that the applicant must provide in order for the application to be considered administratively complete.

(d) Authorizes the applicant to request an extension of the time to submit a response to a request under Subsection (b)(2) or (c)(2). Requires the executive director to grant the request if the applicant demonstrates good cause for the extension. Provides that an extension under this subsection extends the deadline provided by Subsection (e) by the same amount of time as the amount of the extension.

(e) Requires the executive director, not later than the 180th day after the date the executive director receives the application, to:

(1) provide the applicant written notice that the application is administratively complete; or

(2) return the application and the entire filing fee to the applicant and provide the applicant with a list of the deficiencies in the application.

(f) Entitles the applicant to appeal the return of the application and dispute an application deficiency in a hearing before the Texas Natural Resource Conservation Commission (TNRCC). Requires TNRCC to review the application and related documents, rule on the issues presented at the hearing, and issue an order:

(1) directing the executive director to return the application to the applicant;

(2) requesting additional information as required by the executive director to render the application administratively complete; or

(3) declaring that the application is administratively complete and scheduling the technical review of the application.

(g) Requires the applicant, if TNRCC requests additional information from the applicant under Subsection (f)(2), to provide the information to TNRCC not later than the 30th day after the date TNRCC issues the request. Requires TNRCC to review the material and issue an order described by Subsection (f)(1) or (3), as applicable.

(h) Requires the executive director, after the executive director or TNRCC determines that the application is administratively complete, to conduct a technical review of the application. Requires the executive director, as part of the review, to determine whether the applicable water conservation, drought contingency, and water management plans under Sections 11.1271 (Additional Requirements: Water Conservation Plans), 11.1272 (Additional Requirement: Drought Contingency Plans for Certain Applicants and Water Right Holders), and 11.1273 (Additional Requirement: Review of Amendments to Certain Water Management Plans) are adequate.

(i) Requires the executive director, not later than the 180th day after the date on which the technical review begins, to provide the applicant with:

(1) written notice that the technical review is complete, a draft permit, a draft notice, and technical memoranda associated with the application; or

(2) a written request for technical information as determined by the executive director to be necessary for the completion of the technical review.

(j) Authorizes the executive director, with notice to the applicant, to extend the deadline provided by Subsection (i) for a period of 30 days. Prohibits the executive director from extending the deadline more than three times.

(k) Requires the applicant, not later than the 60th day after the date the applicant receives a request under Subsection (i)(2), to provide the requested information to the executive director.

(l) Authorizes the applicant to request an extension of the time to submit a response to a request under Subsection (i)(2). Requires the executive director to grant the request if the applicant demonstrates good cause for the extension. Provides that an extension under this subsection extends the deadline provided by Subsection (n) by the same amount of time as the amount of the extension.

(m) Requires the executive director, not later than the 60th day after the date the executive director receives a timely response to a request under Subsection (i)(2), to review the response and provide the applicant with:

(1) written notice that the technical review is complete, a draft permit, a draft notice, and technical memoranda associated with the application; or

(2) written notice that the response to the request for technical information is deficient.

(n) Requires the executive director and the applicant, if the executive director provides notice under Subsection (m)(2), to collaborate in a good faith effort to resolve the deficiency. Requires the executive director, not later than the 180th day after the date the executive director provides the notice, to:

(1) provide the applicant with written notice that the technical review is complete, a draft permit, a draft notice, and technical memoranda associated with the application; or

(2) return the application and the use fee and the unused portion of the notice fee as prescribed by TNRCC rule to the applicant and provide the applicant with a list of the deficiencies with the application.

(o) Entitles the applicant to appeal the return of the application and dispute an application deficiency in a hearing before TNRCC. Requires TNRCC to review the application and related documents, rule on the issues presented at the hearing, and issue an order:

(1) directing the executive director to return the application to the applicant;

(2) requesting additional information as required by TNRCC; or

(3) requiring the executive director to prepare the draft permit, draft notice, and technical memoranda associated with the application and written notice that the technical review is complete.

(p) Requires the applicant, if TNRCC requests additional information from the applicant under Subsection (o)(2), to provide the information to TNRCC not later than the 30th day after the date TNRCC issues the request. Requires TNRCC to review the material and issue an order described by Subsection (o)(1) or (3), as applicable.

(q) Authorizes the applicant to request an extension of the time to submit a response to a request under Subsection (o)(2). Requires TNRCC to grant the

request if the applicant demonstrates good cause for the extension. Provides that an extension under this subsection extends the deadline provided by Subsection (p) by the same amount of time as the amount of the extension.

(r) Requires the applicant, not later than the 14th day after the date the applicant receives the draft permit, draft notice, and technical memoranda associated with the application, to provide the executive director with:

(1) the applicant's comments on the draft permit, draft notice, and technical memoranda; or

(2) a statement that the applicant has no comment on the draft permit, draft notice, or technical memoranda.

(s) Authorizes the applicant to request an extension of the time to submit comments under Subsection (r)(1). Requires TNRCC to grant the request if the applicant demonstrates good cause for the extension. Provides that an extension under this subsection extends the deadline provided by Subsection (r) by the same amount of time as the amount of the extension.

(t) Requires the executive director to file the draft permit, draft notice, and technical memoranda associated with the application with the chief clerk of TNRCC:

(1) not later than the 14th day after the date the executive director receives comments under Subsection (r)(1), during which time the executive director and the applicant must collaborate to address the comments; or

(2) immediately on receipt of a statement described by Subsection (r)(2).

(u) Requires that the executive director, notwithstanding any other provision of this section, if the executive director makes a written determination that notice is not required for an application, to grant or deny the permit for which the application is filed not later than the 300th day after the date the executive director receives the application. Requires that this period be extended by the same amount of time as the amount of any extension of time granted to the applicant for the provision of information. Deletes existing text requiring TNRCC to determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of TNRCC. Deletes existing text authorizing TNRCC to require amendment of the application, maps, or other materials to achieve necessary compliance.

SECTION 2. Amends Section 11.133, Water Code, as follows:

Sec. 11.133. HEARING. (a) Creates this subsection from existing text. Makes a nonsubstantive change.

(b) Prohibits TNRCC from referring an issue regarding an application to the State Office of Administrative Hearings (SOAH) for a hearing unless TNRCC determines that the issue is:

(1) a disputed question of fact; and

(2) relevant and material to a decision on the application.

(c) Requires TNRCC, if TNRCC grants a request for a hearing, to:

(1) determine the number and scope of issues to be referred to SOAH for a hearing; and

(2) consistent with the nature and number of issues to be considered at the hearing, specify the maximum expected duration of the hearing, which may not exceed a period of 270 days.

(d) Provides that TNRCC, if the application has been determined to be administratively complete and the time for requesting more information under Section 11.129(i)(2) has expired:

(1) is prohibited from revoking that determination; and

(2) is authorized to request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted information.

(e) Provides that a request for information under Subsection (d)(2) does not render the application administratively incomplete.

(f) Prohibits the administrative law judge who conducts the hearing, if TNRCC refers an issue regarding an application to SOAH for a hearing, from granting party status to a person who failed to seek party status from TNRCC before the issue was referred to SOAH.

(g) Provides that, in the event of a conflict between this section and any other law, this section prevails.

SECTION 3. (a) Requires the Texas Commission on Environmental Quality (TCEQ), as soon as practicable after the effective date of this Act, to adopt rules to implement the changes in law made by this Act.

(b) Makes application of the change in law made by this Act prospective.

(c) Authorizes the executive director of TCEQ, on notice to the applicant, beginning on the effective date of the rules adopted under Subsection (a) of this section, to extend the period for technical review of an application for a new or amended water right under Section 11.129, Water Code, as amended by this Act, by a period not to exceed 18 months from the date the rules take effect if:

(1) on the effective date of the rules there are applications for new or amended water rights pending before TCEQ the technical review of which has not been completed; and

(2) the applications described by Subdivision (1) affect the same river basin as the application for which the technical review period is extended.

(d) Requires the executive director of TCEQ, during an extension under Subsection (c) of this section, to take all practicable measures to substantially meet all other applicable deadlines in Section 11.129, Water Code, as amended by this Act, related to the technical review of an application.

SECTION 4. Effective date: upon passage or September 1, 2013.