

BILL ANALYSIS

Senate Research Center
84R7271 SGA-F

H.B. 2179
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Agriculture, Water & Rural Affairs
5/6/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill requires a groundwater conservation district to hold a public hearing on an application for a permit. If there is no protest during this hearing, the board may take an expedited action at any subsequent board meeting, including a meeting immediately following the public hearing. If there is protest, the board shall begin the process of a contested case hearing by scheduling a preliminary hearing to determine the appropriate parties and issues. If any protestant has standing and has raised a justiciable issue, a presiding officer or authority will hold an evidentiary hearing, and once the evidentiary hearing is concluded, issue a proposal for decision. The board shall then consider the proposal for a decision in a final hearing, during which the parties summarize the evidence, present any legal arguments, or argue exceptions to the Proposal for Decision.

H.B. 2179 amends current law relating to hearings that concern the issuance of permits by a groundwater conservation district.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.403, Water Code, as follows:

Sec. 36.403. New heading: SCHEDULING OF PUBLIC HEARING. (a)-(d) Changes a references to a hearing to a public hearing.

SECTION 2. Amends Sections 36.404(a) and (d), Water Code, to change references to a hearing to a public hearing.

SECTION 3. Amends Section 36.405, Water Code, to change a reference to a hearing to a public hearing.

SECTION 4. Amends Subchapter M, Chapter 36, Water Code, by adding Section 36.4051, as follows:

Sec. 36.4051. BOARD ACTION; CONTESTED CASE HEARING REQUESTS; PRELIMINARY HEARING. (a) Authorizes the board of directors of a district (board) to take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. Authorizes the board to issue a written order to grant the application, grant the application with special conditions, or deny the application.

(b) Requires the board to schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Section 36.415 (Rules; Additional Procedures). Authorizes the preliminary hearing to be conducted by:

(1) a quorum of the board;

(2) an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or

(3) the State Office of Administrative Hearings under Section 36.416 (Hearings Conducted by State Office of Administrative Hearings; Rules).

(c) Requires the board, following a preliminary hearing, to determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. Authorizes the board to take any action authorized under Subsection (a) if the board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised.

(d) Authorizes an applicant to, not later than the 20th day after the date the board issues an order granting the application, demand a contested case hearing if the order:

(1) includes special conditions that were not part of the application as finally submitted; or

(2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

SECTION 5. Amends Section 36.406(d), Water Code, to authorize the presiding officer to determine how to apportion among the parties the costs related to a contract for the services of a presiding officer and the preparation of the official hearing record. Makes nonsubstantive changes to this subsection.

SECTION 6. Amends Section 36.410, Water Code, as follows:

Sec. 36.410. New heading: PROPOSAL FOR DECISION. (a) Requires the presiding officer, except as provided by Subsection (e), to submit a proposal for decision, rather than a report, to the board not later than the 30th day after the date the evidentiary hearing is concluded. Makes nonsubstantive change.

(b) Changes a reference to the report to the proposal for decision.

(c) Requires the presiding officer or general manager to provide a copy of the proposal for decision to the applicant and each designated party.

Deletes existing text requiring the presiding officer or general manager to provide a copy of the report to each person who provided comments.

(d) Authorizes a party, rather than a person who receives a copy of the report under Subsection (c), to submit to the board written exceptions to the proposal for decision. Makes conforming change.

(e) Requires the presiding officer to determine whether to prepare and submit a proposal for decision to the board under this section if the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a) (requiring the presiding officer to prepare and keep an accessible record hearing). Makes conforming change.

(f) Requires the board to consider the proposal for decision at a final hearing. Provides that additional evidence may not be presented during a final hearing. Authorizes the parties to present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for

decision. Authorizes a final hearing to be continued as provided by Section 36.409 (Continuance).

SECTION 7. Amends Sections 36.412(a), (b), and (c), Water Code, as follows:

(a) Deletes existing text authorizing an applicant in a contested or uncontested hearing on an application or a party to a contested hearing to administratively appeal a decision of the board on a permit or permit amendment application by requesting a rehearing before the board.

(b) Authorizes a party to a contested hearing to request a rehearing not later than the 20th day after the date the board issues the findings and conclusions. Deletes existing text requiring the board to provide certified copies of the findings and conclusions to each person who provided comments or each designated party. Deletes existing text authorizing a person who receives a certified copy of the findings and conclusions from the board to request a rehearing before the board.

(c) Requires the party, rather than person, requesting a rehearing to provide copies of the request to all parties to the hearing if the original hearing was a contested hearing.

SECTION 8. Amends Section 36.415(b), Water Code, as follows:

(b) Requires a district (relating to any district or authority created under certain provisions that has the authority to regulate the spacing of water wells, the production from water well, or both), in adopting the rules, to establish the deadline for a person who may participate under Subdivision (2) (relating to persons having certain justiciable interest) to file in the manner required by the district a protest and request for a contested case hearing. Makes nonsubstantive changes.

SECTION 9. Amends Section 36.416, Water Code, by adding Subsections (d), (e), and (f), as follows:

(d) Requires an administrative law judge who conducts a contested case hearing to consider applicable district rules or policies in conducting the hearing, but prohibits the district deciding the case from supervising the administrative law judge.

(e) Requires a district to provide the administrative law judge with a written statement of applicable rules or policies.

(f) Prohibits a district from attempting to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

SECTION 10. Amends Section 36.4165, Water Code, as follows:

Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS. (a) Creates subsection from existing text and removes statutory reference to Section 2001.058 (Hearing Conducted by State Office of Administrative Hearings), Government Code.

(b) Authorizes a board to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative judge, only if the board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, district rules, written policies provided under Section 36.416(e), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

SECTION 11. Makes application of this Act prospective in regard to an application for a permit or a permit amendment.

SECTION 12. Effective date: upon passage or September 1, 2015.