

Technical Overview

HB 3544 -2

House Committee on Agriculture, Land Use, Natural Resources &
Water

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Organization of HB 3544-2

- Sec. 2 and 3 – Establish requirements for a uniform contested case process
 - Applicable to items handled by Water Rights Services Division (ex. Applications for transfers, new water rights, etc.)
 - Not applicable to enforcements, basin specific hearings, or adjudications
- Sec. 4-27 – Deletes contested case specific text in existing statute; adds reference to sections 2 and 3. Repeals of separate individual contested case statutes
- Sec. 28-29 – Applicability to existing caseloads
- Sec. 30-39 – Conforming to update statutory references of items renumbered or repealed in Sections 4-27.
- Section 40 – Captions

Section 2

- Identifies types of cases applicable to
 - Requires rulemaking
 - Default hearing schedule, with exceptions
 - Complete in 180 days: referral to closing arguments
 - Establishes preference for oral* testimony , where practicable
 - Post notice of hearing schedule, factors for scheduling
- Protests and contested case requirements vary
 - *Some items in bill could be done via rule or procedures; some require AG exception to model rules*
 - Currently no standard schedule; ad-hoc on case-by case basis; can lead to lengthening
 - Deadlines vary based on case; most not feasible
 - Optional
 - *Procedural, could implement today*

Section 2

- Notify parties of referral timeline, offer to engage in settlement, closing arguments within 180 days of referral, extensions unlikely after referral, list of issues, and how to obtain the file
 - *Dept could do most of this today*
- Allow assignment of a settlement judge prior to referral for a contested case hearing, with the concurrence of department.
 - Authority unclear
- Establish a default that hearings shall be held remotely.
 - Some locations in statute; varies based on application type.

Section 2

- Allow OWRD to determine at the time of a referral whether motions for summary determination will be allowed based on whether issues raised in the protest are likely to present genuine issues of material fact.
 - Requests for the production constitute public records request
 - Limit the number of interrogatories and requests for admission that a party may make.
 - Establish page limits for exceptions.
 - If parties may file exceptions to the Commission, limited to addressing the interpretation of a statute or rule.
- Not applied today; *could seek an exemption from the AG model rules*
 - Not applied today; *could adopt rule*
 - Currently separate; *Could adopt a rule*
 - *Could do in rule/writing*
 - Exceptions to director, then 2nd round of exceptions to Commission; no limits

Section 3

- Provides for 45-day protest period or # of days established in rule
 - Varies in statute: 30 days, 45 days, 60 days
- Establishes standard requirements for what must be contained in protest, including protestants interest, how the PFO would impair protestant's interest, and requires issues to be raised with sufficient specificity
 - Varies by application type, some in rule or statute

Section 3

- Deadline for filing party status - 30 days after protest close; establishes standard requirements for party status
 - Administrative Law Judge order on a motion to compel discovery is final; not subject to appeal to the chief administrative law judge
- Varies; New water rights - current is a two-step process:
 - standing statement and fee during protest period
 - then later request for party status
 - *Not applied today, but could seek an exemption from the AG model rules*

Section 3

- Clarifies that hearing is not required if:
(1) settlement, (2) protest withdrawn,
(3) protestant defaults
 - Requires protest to raise issue with
sufficient specificity to allow response;
findings of fact, conclusions of law,
conditions of approval, department's
jurisdiction, facts to show entitled to
relief/action
 - Hearings limited to properly raised
issues: Failure to raise before a protest
deadline precludes consideration at
hearing, or judicial review
- Transfers statute implies must have
hearing
 - Varies. Apply to some types but not all:
Ex. Specificity applies to new water
right applications but not expressly
others; Facts to show entitled to the
relief applies to others but not new
water right applications
 - Varies by applicable law

Section 3

- Ruling in a previous final order in contested case hearing to be treated as precedent if its publicly accessible on OWRD website*, legal interpretation has not changed or been overturned, and ALJ includes in PFO that legal issue was raised and preserved for appeal
 - Proposed final orders that are not protested become final orders 30 days after protest period
- Varies, often re-briefed; ALJ may adopt reasoning from prior final orders but are not required to
 - *online site being scoped
 - Write and issue a separate final order after protest period, even if no protest is filed

Other Notes

- Some drafting errors have been identified; do not have a comprehensive list yet