

Technical Overview

HB 3544 -3

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

**Amendment removes district change provisions*
- Sec. 4-23 – Deletes contested case specific text in existing statute; adds reference to sections 2 and 3; modifications to work in conjunction with 2 and 3
- Sec. 24 – Applicability to existing caseloads
- Sec. 25-32 – Conforming to update statutory references of items renumbered or delete references.
- Section 33 – Captions

Section 2

- Identifies types of cases applicable to
- Makes clear connection to APA
- Default hearing schedules, with exceptions; complete in 180 days from referral to hearing
 - Currently no standard schedules; ad-hoc on case-by case basis
 - Identifies how exceptions to schedule can be obtained
- Establishes preference for oral testimony , where practicable and to streamline
 - Optional

Section 2

- Allow assignment of a settlement judge; resolve in 60 days or case goes on through hearing process
 - Preference for remote hearings.
 - If parties may file exceptions to the Commission, limited to addressing the interpretation of a statute or rule.
 - Establish timelines to rule on party status
- Authority unclear
 - Some locations in statute; varies based on application type.
 - Exceptions to director, then 2nd round of exceptions to Commission; no limits

Section 3

- Provides for 45-day protest period unless otherwise stated in statute. Maintains existing timelines.
 - Establishes standard requirements for what must be contained in protest, including protestants interest, how the PFO would impair protestant's interest, and legal authorities.
- Varies in statute: 30 days, 45 days, 60 days
 - Varies by application type, some in rule or statute

Section 3

- Requires protest to raise issue with sufficient specificity to allow response; findings of fact, conclusions of law, conditions of approval, department's jurisdiction
 - Varies. Apply to some types but not all
- Hearings limited to properly raised issues: Failure to raise all reasonably ascertainable issues before a protest deadline precludes judicial review
 - Varies. Apply to some types but not all
- Clarifies that hearing is not required if:
(1) settlement, (2) protest withdrawn,
(3) protestant defaults
 - Transfers statute implies must have hearing

Section 3

- Deadline for filing party status - 30 days after protest close
 - Establishes standard requirements for party status including fees for all processes; fees collected upfront and then portion is returned if not granted; moves to one-step
 - *note 536.050 1(o) was omitted and needs to be added for one-step process 3(2)(b)(C)
- Varies; New water rights - current is a two-step process:
- standing statement and fee during protest period
 - then later request for party status and fee

Section 3

- Proposed final orders that are not protested become final orders 30 days after protest period
- Write and issue a separate final order after protest period, even if no protest is filed