

## **BILL ANALYSIS**

Senate Research Center  
85R20005 SLB-D

C.S.S.B. 226  
By: Taylor, Van  
Agriculture, Water & Rural Affairs  
4/4/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Any person wishing to store, take, or divert surface water for a beneficial use (e.g., domestic, agricultural, or recreational purposes) must apply for a water right with the Texas Commission on Environmental Quality (TCEQ). Once approved by TCEQ, a right holder must use the water precisely in the manner described by the permit. If a person wants to amend their water right to alter its place or purpose of use, diversion point, or other provisions within the permit, then they must submit an application for those changes to TCEQ. Like new water rights applications, those for water rights amendments are subject to extensive public notice requirements, and must undergo technical review by the agency. Further, these applications may be subject to contested case hearings, especially if the proposed change to the existing water right affects other water permits or the environment.

Interested parties observe that the application process for a water right amendment can be costly and lengthy. These parties further observe that some water rights amendments are simple, such as changing the physical location of a diversion point by a small distance, and have no bearing on other rights within a river basin or the environment. As an alternative to the lengthy application process, interested parties observe that minor, technical water rights amendments could be exempted from several procedural requirements.

S.B. 226 exempts certain types of limited water rights amendments from the notice, review, and hearing requirements applicable to all applications. The bill identifies three types of water rights amendments that would be exempt from these requirements. Those include amendments that add a purpose of use that does not change a non-consumptive right to a consumptive right or alter a pattern of use in a permit, add a place of use within the same basin, or change a diversion point within a continuous tract of land. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 226 amends current law relating to the procedure for action on certain applications for an amendment to 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**

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 11.122, Water Code, by adding Subsection (b-1), as follows:

(b-1) Exempts an application for an amendment to a water right, in addition to an application that meets the requirements of Subsection (b) and for which the Texas Natural Resource Conservation Commission (TNRCC) has determined that notice or an opportunity for a contested case hearing is not required under another statute or TNRCC rule, from any requirements of a statute or TNRCC rule regarding notice and hearing or technical review by the TNRCC executive director (executive director) or TNRCC, and prohibits an application from being referred to the State Office of Administrative

Hearings for a contested case hearing if the executive director determines after an administrative review that the application is for an amendment that:

(1) adds a purpose of use that does not substantially alter the nature of the right from a right authorizing only nonconsumptive use to a right authorizing consumptive use, or a pattern of use that is explicitly authorized in or required by the original right;

(2) adds a place of use located in the same basin as the place of use authorized by the original right; or

(3) changes the point of diversion, provided that:

(A) the authorized rate of diversion is not increased;

(B) the original and new points of diversion are located in the same contiguous tract of land;

(C) the original and the new points of diversion are from the same source of supply;

(D) there are no points of diversion from the same source of supply associated with other water rights that are located between the original and the new points of diversion;

(E) there are no streamflow gauges located on the source of supply between the original and new points of diversion that are referenced in the original water right or in another water right authorizing a diversion from the same source of supply; and

(F) there are no tributary watercourses that enter the watercourse that is the source of supply between the original and the new points of diversion.

SECTION 2. Provides that this Act applies to an application to amend a water right that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act or is pending as of the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2017.