

By: Hegar

S.B. No. 1675

A BILL TO BE ENTITLED

AN ACT

relating to the authority of local governments to enforce a water pollution control and abatement program and establish standards and practices for water quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 26.177, Water Code, is amended to read as follows:

Sec. 26.177. WATER POLLUTION CONTROL DUTIES OF LOCAL GOVERNMENTS [~~CITIES~~].

SECTION 2. Section 26.177, Water Code, is amended by amending Subsections (a), (b), (c), (d), (f), and (g) and adding Subsection (i) to read as follows:

(a) Except as provided by Subsection (i), and notwithstanding any other law, a local government [A-city] may establish a water pollution control and abatement program for the territorial area of the local government on or after June 1, 2007, and enforce a water pollution control and abatement program adopted before June 1, 2007, only to ensure compliance with commission pollution and degradation standards and practices and with commission rules. A local government does not have independent authority to regulate water quality, issue permits, or establish standards or practices for water quality [city]. If the watershed water quality assessment reports required by Section 26.0135 or other commission assessments or studies identify water pollution

1 that is attributable to non-permitted sources in a city that has a
2 population of 10,000 or more or in the territorial area of any other
3 local government, the commission, after providing the city or other
4 local government a reasonable time to correct the problem and after
5 holding a public hearing, may require the city or other local
6 government to establish a water pollution control and abatement
7 program. The local government [~~city~~] shall employ or retain an
8 adequate number of personnel on either a part-time or full-time
9 basis as the needs and circumstances of the local government [~~city~~]
10 may require, who by virtue of their training or experience are
11 qualified to perform the water pollution control and abatement
12 functions required to enable the local government [~~city~~] to carry
13 out its duties and responsibilities under this section.

14 (b) The water pollution control and abatement program of a
15 local government [~~city~~] shall encompass the entire territorial area
16 of the local government. A water pollution control and abatement
17 program adopted by a city [~~and, subject to Section 26.179 of this~~
18 ~~code,~~] may include only those areas within its extraterritorial
19 jurisdiction that are not located within a county that has adopted a
20 water pollution control and abatement program and that [~~which~~] in
21 the judgment of the city should be included to enable the city to
22 achieve the objectives of the city for the area within its
23 territorial jurisdiction. If a city adopts a water pollution
24 control and abatement program and a county later adopts a water
25 pollution control and abatement program that includes any part of
26 the extraterritorial jurisdiction included within the city's
27 program, that portion of the city's extraterritorial jurisdiction

1 automatically shall be removed from the city's program and shall be
2 subject only to the county's water pollution control and abatement
3 program. A local government ~~[The city]~~ shall include in the program
4 the services and functions ~~[which, in the judgment of the city or]~~
5 as may be reasonably required by the commission to ensure
6 compliance with pollution and degradation standards and practices
7 adopted by the commission ~~[, will provide effective water pollution~~
8 ~~control and abatement for the city]~~, including the following
9 services and functions:

10 (1) the development and maintenance of an inventory of
11 all significant waste discharges into or adjacent to the water
12 within the territorial area of the local government ~~[city]~~ and,
13 where a ~~[the]~~ city so elects, within the extraterritorial
14 jurisdiction of the city, without regard to whether or not the
15 discharges are authorized by the commission;

16 (2) the regular monitoring of all significant waste
17 discharges included in the inventory prepared pursuant to
18 Subdivision (1) of this subsection;

19 (3) the collecting of samples and the conducting of
20 periodic inspections and tests of the waste discharges being
21 monitored to determine whether the discharges are being conducted
22 in compliance with this chapter and any applicable permits, orders,
23 or rules of the commission, and whether they should be covered by a
24 permit from the commission;

25 (4) in cooperation with the commission, a procedure
26 for obtaining compliance by the waste dischargers being monitored,
27 including where necessary the use of legal enforcement proceedings;

1 (5) the development and execution of reasonable and
2 realistic plans for ensuring compliance with state water quality
3 standards and practices adopted by the commission for controlling
4 and abating pollution or potential pollution resulting from
5 generalized discharges of waste which are not traceable to a
6 specific source, such as storm sewer discharges and urban runoff
7 from rainwater; and

8 (6) any additional services, functions, or other
9 requirements as may be prescribed by commission rule.

10 (c) The water pollution control and abatement program
11 authorized or required by Subsections (a) and (b) [of this section]
12 must be submitted to the commission for review and approval. A
13 water pollution control and abatement program is not effective, and
14 may not be enforced, until the commission approves the program. The
15 commission shall ~~may~~ adopt rules providing the criteria for the
16 establishment of those programs and the review and approval of
17 those programs.

18 (d) Any person affected by any ruling, order, decision,
19 ordinance, program, resolution, or other act of a local government
20 ~~[city]~~ relating to water pollution control and abatement outside
21 the jurisdictional ~~[corporate]~~ limits of such local government
22 ~~[city]~~ adopted pursuant to this section or any other statutory
23 authorization may appeal such action to the commission or district
24 court. An appeal must be filed with the commission within 60 days
25 of the enactment of the ruling, order, decision, ordinance,
26 program, resolution, or act of the local government ~~[city]~~. The
27 issue on appeal is whether the action or program is invalid,

1 arbitrary, unreasonable, inefficient, or ineffective in its
2 attempt to ensure compliance with the pollution and degradation
3 standards and practices adopted by the commission [~~control water~~
4 ~~quality~~]. The commission or district court may overturn or modify
5 the action of the local government [~~city~~]. If an appeal is taken
6 from a commission ruling, the commission ruling shall be in effect
7 for all purposes until final disposition is made by a court of
8 competent jurisdiction so as not to delay any permit approvals.

9 (f) A city or county may contract with a river authority or
10 another political subdivision to perform any or all services and
11 functions that are part of a water pollution control and abatement
12 program established under this section.

13 (g) The commission may assist local governments [~~cities~~] in
14 identifying and obtaining funds and technical assistance that may
15 be available to assist a local government [~~city~~], or a river
16 authority or other political subdivision with whom a city or county
17 has contracted, in performing any or all of the services or
18 functions that are part of a water pollution control and abatement
19 program established under this section.

20 (i) The commission shall adopt rules allowing the
21 establishment of regional water pollution control and abatement
22 programs. A regional water pollution control and abatement program
23 may be established in accordance with commission rules by five or
24 more contiguous counties and each city in that multi-county region
25 that agrees to enforce the program. A local government in the
26 region may perform the services and functions described by
27 Subsections (b)(1) through (6) in accordance with the regional

1 water pollution control and abatement program adopted by the
2 region. A regional water pollution control and abatement program
3 must be approved by the commission to ensure that the program has
4 been adopted in accordance with commission rules and water
5 pollution and degradation standards and practices adopted by the
6 commission.

7 SECTION 3. Not later than September 1, 2008, the Texas
8 Commission on Environmental Quality shall adopt rules necessary
9 for administering Section 26.177, Water Code, as amended by this
10 Act.

11 SECTION 4. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2007.