

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Phillips

H.B. No. 147

A BILL TO BE ENTITLED

AN ACT

relating to the deferral of an administrative penalty imposed by the Texas Commission on Environmental Quality against certain utilities and districts.

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

SECTION 1. Subchapter B, Chapter 7, Water Code, is amended by adding Section 7.034 to read as follows:

Sec. 7.034. DEFERRAL OF PENALTY FOR CERTAIN UTILITY FACILITIES. (a) In this section:

(1) "District" has the meaning assigned by Section 49.001.

(2) "Municipally owned utility" and "water supply or sewer service corporation" have the meanings assigned by Section 13.002.

(b) The commission may allow a municipally owned utility, a water supply or sewer service corporation, or a district to defer the payment of all or part of an administrative penalty imposed under Subchapter C for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violation.

(c) In determining whether deferral of a penalty under this section is appropriate, the commission shall consider the factors to be considered under Section 7.053 and the following factors:

(1) the financial position of the entity and its

1 ability to reasonably pay the costs of corrective action under the  
2 terms of a commission order;

3 (2) risks to public health and the environment of any  
4 delay in addressing the corrective actions as a result of limited  
5 financial resources;

6 (3) alternatives reasonably available to the entity  
7 for paying both the costs of corrective action and the penalty; and

8 (4) potential effects of the payment of the penalty on  
9 other essential public health and safety services for which the  
10 entity is responsible.

11 (d) At the discretion of the commission, any penalty  
12 deferred under this section becomes due and payable on a commission  
13 determination that the entity is not in compliance with a provision  
14 for corrective action in a commission order to address the  
15 violation.

16 SECTION 2. Section 7.034, Water Code, as added by this Act,  
17 applies only to a violation that occurs on or after the effective  
18 date of this Act. A violation that occurs before the effective date  
19 of this Act is covered by the law in effect on the date the violation  
20 occurred, and the former law is continued in effect for that  
21 purpose.

22 SECTION 3. This Act takes effect September 1, 2007.

**ADOPTED**

MAY 23 2007

*Atty. Gen.*  
Secretary of the Senate

By: Phillips/Seliger

H.B. No. 147

Substitute the following for H.B. No. 147:

By: *Seliger*

C.S.H.B. No. 147

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the deferral of an administrative penalty imposed by  
3 the Texas Commission on Environmental Quality against certain  
4 utilities and districts.

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

6 SECTION 1. Subchapter B, Chapter 7, Water Code, is  
7 amended by adding Section 7.034 to read as follows:

8 Sec. 7.034. DEFERRAL OF PENALTY FOR CERTAIN UTILITY  
9 FACILITIES. (a) In this section:

10 (1) "District" means any district or authority  
11 created under either Article III, Section 52, or Article XVI,  
12 Section 59, of the Texas Constitution, regardless of how  
13 created. The term "district" shall not include any navigation  
14 district or port authority created under general or special law  
15 or any conservation and reclamation district governed by Chapter  
16 36 unless a special law creating the district or amending the  
17 law creating the district states that Chapter 49 applies to the  
18 district.

19 (2) "Municipally owned utility" and "water supply or

1 sewer service corporation" have the meanings assigned by Section  
2 13.002.

3 (b) The commission may allow a municipally owned utility,  
4 a water supply or sewer service corporation, or a district to  
5 defer the payment of all or part of an administrative penalty  
6 imposed under Subchapter C for a violation on the condition that  
7 the entity complies with all provisions for corrective action in  
8 a commission order to address the violation.

9 (c) In determining whether deferral of a penalty under  
10 this section is appropriate, the commission shall consider the  
11 factors to be considered under Section 7.053 and the following  
12 factors:

13 (1) the financial position of the entity and its  
14 ability to reasonably pay the costs of corrective action under  
15 the terms of a commission order;

16 (2) risks to public health and the environment of any  
17 delay in addressing the corrective actions as a result of  
18 limited financial resources;

19 (3) alternatives reasonably available to the entity  
20 for paying both the costs of corrective action and the penalty;  
21 and

22 (4) potential effects of the payment of the penalty  
23 on other essential public health and safety services for which  
24 the entity is responsible.

1        (d) At the discretion of the commission, any penalty  
2 deferred under this section becomes due and payable on a  
3 commission determination that the entity is not in compliance  
4 with a provision for corrective action in a commission order to  
5 address the violation.

6        SECTION 2. Section 7.034, Water Code, as added by this  
7 Act, applies only to a violation that occurs on or after the  
8 effective date of this Act. A violation that occurs before the  
9 effective date of this Act is covered by the law in effect on  
10 the date the violation occurred, and the former law is continued  
11 in effect for that purpose.

12        SECTION 3. This Act takes effect September 1, 2007.



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 17, 2007**

**TO:** Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB147** by Phillips (Relating to the deferral of an administrative penalty imposed by the Texas Commission on Environmental Quality against certain utilities and districts. ),  
**Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Texas Commission on Environmental Quality (TCEQ) to consider certain factors in determining whether deferral of an administrative penalty for a municipally owned utility that is under enforcement for a deficiency in the utility's facilities would be appropriate. Factors included would include the financial position of the entity and its ability to pay the costs of corrective action, the risks to public health and the environment of delay in addressing corrective action, any alternatives available to the entity for paying the costs of the penalty and corrective action, and the effect of the penalty payment on any other public health and safety services the entity provides. The TCEQ could require payment of any deferred penalty if the entity was not in compliance with a provision of its corrective action order.

Passage of the bill is not expected to result in any significant fiscal implications to the TCEQ. The TCEQ anticipates that all rulemaking and procedural changes could be accomplished using current agency resources. Any loss in revenues to the state resulting from penalty deferrals is not expected to be significant.

**Local Government Impact**

The bill could result in a positive fiscal impact to municipalities that would receive penalty deferrals as a result of the bill's passage. The amount a municipality might save would depend on the amount of the penalty and the portion that might be deferred.

**Source Agencies:** 582 Commission on Environmental Quality

**LBB Staff:** JOB, WK, TL





**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 14, 2007**

**TO:** Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB147** by Phillips (Relating to the deferral of an administrative penalty imposed by the Texas Commission on Environmental Quality against certain utilities and districts.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Texas Commission on Environmental Quality (TCEQ) to consider certain factors in determining whether deferral of an administrative penalty for a municipally owned utility that is under enforcement for a deficiency in the utility's facilities would be appropriate. Factors included would include the financial position of the entity and its ability to pay the costs of corrective action, the risks to public health and the environment of delay in addressing corrective action, any alternatives available to the entity for paying the costs of the penalty and corrective action, and the effect of the penalty payment on any other public health and safety services the entity provides. The TCEQ could require payment of any deferred penalty if the entity was not in compliance with a provision of its corrective action order.

Passage of the bill is not expected to result in any significant fiscal implications to the TCEQ. The TCEQ anticipates that all rulemaking and procedural changes could be accomplished using current agency resources. Any loss in revenues to the state resulting from penalty deferrals is not expected to be significant.

**Local Government Impact**

The bill could result in a positive fiscal impact to municipalities that would receive penalty deferrals as a result of the bill's passage. The amount a municipality might save would depend on the amount of the penalty and the portion that might be deferred.

**Source Agencies:** 582 Commission on Environmental Quality

**LBB Staff:** JOB, WK, TL



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 1, 2007**

**TO:** Honorable Robert Puente, Chair, House Committee on Natural Resources

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB147** by Phillips (Relating to the deferral of an administrative penalty imposed by the Texas Commission on Environmental Quality against certain utilities and districts. ),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Texas Commission on Environmental Quality (TCEQ) to consider certain factors in determining whether deferral of an administrative penalty for a municipally owned utility that is under enforcement for a deficiency in the utility's facilities would be appropriate. Factors included would include the financial position of the entity and its ability to pay the costs of corrective action, the risks to public health and the environment of delay in addressing corrective action, any alternatives available to the entity for paying the costs of the penalty and corrective action, and the effect of the penalty payment on any other public health and safety services the entity provides. The TCEQ could require payment of any deferred penalty if the entity was not in compliance with a provision of its corrective action order.

Passage of the bill is not expected to result in any significant fiscal implications to the TCEQ. The TCEQ anticipates that all rulemaking and procedural changes could be accomplished using current agency resources. Any loss in revenues to the state resulting from penalty deferrals is not expected to be significant.

**Local Government Impact**

The bill could result in a positive fiscal impact to municipalities that would receive penalty deferrals as a result of the bill's passage. The amount a municipality might save would depend on the amount of the penalty and the portion that might be deferred.

**Source Agencies:** 582 Commission on Environmental Quality

**LBB Staff:** JOB, WK, TL



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

April 2, 2007

**TO:** Honorable Robert Puente, Chair, House Committee on Natural Resources

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB147** by Phillips (Relating to the use of an administrative penalty imposed by the Texas Commission on Environmental Quality against a municipally owned utility to ameliorate the violation for which the penalty was imposed.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would authorize the Texas Commission on Environmental Quality (TCEQ) to allow a municipally-owned utility that is under enforcement for a deficiency in the utility's facilities to use any portion of an administrative penalty to correct the violation or to improve the facilities in lieu of ordering payment of the penalty.

The bill could result in a decrease in penalty payments to the General Revenue Fund; however, any loss is not expected to be significant. In addition, any administrative costs to the the TCEQ in implementing the bill are expected to be minimal.

**Local Government Impact**

Municipalities owning their utilities could experience a positive fiscal impact upon passage of the bill because they would be allowed to use funds that would otherwise be paid as administrative penalties to correct deficiencies in their own facilities.

**Source Agencies:** 582 Commission on Environmental Quality

**LBB Staff:** JOB, WK, TL

