

SENATE AMENDMENTS

2nd Printing

By: Turner

H.B. No. 1391

A BILL TO BE ENTITLED

AN ACT

relating to the provision of water and utility service.

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

SECTION 1. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.0357 to read as follows:

Sec. 341.0357. PUBLIC SAFETY STANDARDS. (a) In this section:

(1) "Public utility" has the meaning assigned by Section 13.002, Water Code.

(2) "Regulatory authority" has the meaning assigned by Section 13.002, Water Code.

(3) "Residential area" means:

(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(C) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(b) The regulatory authority for a public utility shall by

1 rule or ordinance adopt standards for maintaining sufficient water
2 pressure for service to fire hydrants adequate to protect public
3 safety in residential areas in a municipality with a population of
4 655,000 or more.

5 (c) The commission shall assess residential areas in a
6 municipality with a population of 655,000 or more to ensure that:

7 (1) the regulatory authority for the area has adopted
8 the standards required by this section; and

9 (2) all public utilities serving the residential area
10 are complying with the standards required by this section.

11 (d) The commission shall require a municipality with a
12 population of 655,000 or more and acting as a regulatory authority
13 to make appropriate revisions to standards the commission considers
14 to be inadequate within a reasonable time established by the
15 commission.

16 (e) The commission shall require a public utility in
17 violation of a standard required under this section and established
18 by the commission or by a municipality with a population of 655,000
19 or more and acting as a regulatory authority to comply with the
20 standard within a reasonable time established by the commission.

21 (f) This section does not limit the authority of a
22 municipality with a population of 655,000 or more and acting as a
23 regulatory authority to prohibit a public utility in violation of a
24 standard established by the municipality from recovering through
25 the public utility's rates a penalty or fine incurred for a
26 violation of a standard.

27 SECTION 2. Section 341.040, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 341.040. DEFINITION. In this subchapter,
3 "commission" means the Texas [~~Natural Resource Conservation~~]
4 Commission on Environmental Quality.

5 SECTION 3. Subchapter C, Chapter 13, Water Code, is amended
6 by adding Section 13.046 to read as follows:

7 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR
8 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The
9 commission by rule shall establish a procedure that allows a retail
10 public utility that takes over the provision of services for a
11 nonfunctioning retail water or sewer utility service provider to
12 charge a reasonable rate for the services provided to the customers
13 of the nonfunctioning system and to bill the customers for the
14 services at that rate immediately to recover service costs.

15 (b) The rules must provide a streamlined process that the
16 retail public utility that takes over the nonfunctioning system may
17 use to apply to the commission for a ruling on the reasonableness of
18 the rates the utility is charging under Subsection (a). The process
19 must allow for adequate consideration of costs for interconnection
20 or other costs incurred in making services available and of the
21 costs that may necessarily be incurred to bring the nonfunctioning
22 system into compliance with commission rules.

23 (c) The commission shall provide a reasonable period for the
24 retail public utility that takes over the nonfunctioning system to
25 bring the nonfunctioning system into compliance with commission
26 rules during which the commission may not impose a penalty for any
27 deficiency in the system that is present at the time the utility

1 takes over the nonfunctioning system. The commission must consult
2 with the utility before determining the period and may grant an
3 extension of the period for good cause.

4 SECTION 4. This Act takes effect September 1, 2007.

ADOPTED

MAY 22 2007

Atty. Gen.
Secretary of the Senate

By: *Whitmore*

H.B. No. 1391

Substitute the following for H.B. No. 1391:

By: *Craig Ester*

C.S. H.B. No. 1391

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10 Section 13.002, Water Code.

11 (2) "Regulatory authority" has the meaning assigned
12 by Section 13.002, Water Code.

13 (3) "Residential area" means:

14 (A) an area designated as a residential zoning
15 district by a governing ordinance or code or an area in which
16 the principal land use is for private residences;

17 (B) a subdivision for which a plat is recorded
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19 is bounded by public streets or parts of public streets that are

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1 abutted by residential property occupying at least 75 percent of
2 the front footage along the block face; or

3 (C) a subdivision a majority of the lots of
4 which are subject to deed restrictions limiting the lots to
5 residential use.

6 (b) The regulatory authority for a public utility shall by
7 rule or ordinance adopt standards for maintaining sufficient
8 water pressure for service to fire hydrants adequate to protect
9 public safety in residential areas in a municipality with a
10 population of 1,000,000 or more.

11 (c) The commission shall assess residential areas in a
12 municipality with a population of 1,000,000 or more to ensure
13 that:

14 (1) the regulatory authority for the area has adopted
15 the standards required by this section; and

16 (2) all public utilities serving the residential area
17 are complying with the standards required by this section.

18 (d) The commission shall require a municipality with a
19 population of 1,000,000 or more and acting as a regulatory
20 authority to make appropriate revisions to standards the
21 commission considers to be inadequate within a reasonable time
22 established by the commission.

23 (e) The commission shall require a public utility in
24 violation of a standard required under this section and

1 established by the commission or by a municipality with a
2 population of 1,000,000 or more and acting as a regulatory
3 authority to comply with the standard within a reasonable time
4 established by the commission.

5 (f) This section does not limit the authority of a
6 municipality with a population of 1,000,000 or more and acting
7 as a regulatory authority to prohibit a public utility in
8 violation of a standard established by the municipality from
9 recovering through the public utility's rates a penalty or fine
10 incurred for a violation of a standard.

11 SECTION 2. Section 341.040, Health and Safety Code, is
12 amended to read as follows:

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14 "commission" means the Texas [~~Natural Resource Conservation~~]
15 Commission on Environmental Quality.

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

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 18, 2007

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

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

IN RE: HB1391 by Turner (Relating to othe provision of water and utility services.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require that the regulatory authority for a public utility serving a residential area adopt public safety service standards, including standards for maintaining sufficient water pressure for service to fire hydrants to protect public health in residential areas in a municipality with a population of 1,000,000 or more.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to assess residential areas in a municipality with a population of 1,000,000 or more to ensure that the regulatory authority for the area has adopted standards as provided in the bill, and that all public utilities serving the residential area are complying with such standards. The TCEQ would require violators to comply within a reasonable time, as established by the Commission. The bill would not limit the authority of a municipality with a population of 1,000,000 or more and acting as the regulatory authority to prohibit a violator from recovering through rates a penalty or fine incurred for violation of a standard.

According to the TCEQ, under current law and TCEQ rules public water systems are required to provide potable water for human use at a minimum pressure of 35 psi (lb/sq.in.). There are no fire flow requirements in agency statutes or rules.

Passage of the bill would result in some additional administrative costs to the TCEQ relating to rulemaking, inspections, and compliance review. These additional costs are expected to be reasonably absorbed within the agency's existing resources.

Local Government Impact

A utility serving a municipality with a population over 1,000,000 that does not currently maintain adequate pressure at fire hydrants could incur expenses associated with the installation of new water lines, additional storage, service pumps and increased water supply capacities. The cost would depend on the size of the service area and the pressure under the current system.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, CT, WK, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 3, 2007

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

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

IN RE: HB1391 by Turner (Relating to the provision of water and utility service.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would require that the regulatory authority for a public utility serving a residential area adopt public safety service standards, including standards for maintaining sufficient water pressure for service to fire hydrants to protect public health in residential areas in a municipality with a population of 655,000 or more (Austin, Dallas, Fort Worth, Houston and San Antonio).

The bill would require the Texas Commission on Environmental Quality (TCEQ) to assess residential areas in a municipality with a population of 655,000 or more to ensure that the regulatory authority for the area has adopted standards as provided in the bill, and that all public utilities serving the residential area are complying with such standards. The TCEQ would require violators to comply within a reasonable time, as established by the Commission. The bill would not limit the authority of a municipality with a population of 655,000 or more and acting as the regulatory authority to prohibit a violator from recovering through rates a penalty or fine incurred for violation of a standard.

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Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, CT, WK, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 20, 2007

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

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

IN RE: HB1391 by Turner (Relating to the authority to regulate certain water and sewage utilities to ensure public safety in residential areas.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require that the regulatory authority for a public utility serving a residential area adopt public safety service standards, including standards for maintaining sufficient water pressure for service to fire hydrants to protect public health in residential areas in a municipality with a population of 655,000 or more (Austin, Dallas, Fort Worth, Houston and San Antonio).

The bill would require the Texas Commission on Environmental Quality (TCEQ) to assess residential areas in a municipality with a population of 655,000 or more to ensure that the regulatory authority for the area has adopted standards as provided in the bill, and that all public utilities serving the residential area are complying with such standards. The TCEQ would require violators to comply within a reasonable time, as established by the Commission. The bill would not limit the authority of a municipality with a population of 655,000 or more and acting as the regulatory authority to prohibit a violator from recovering through rates a penalty or fine incurred for violation of a standard.

According to the TCEQ, under current law and TCEQ rules public water systems are required to provide potable water for human use at a minimum pressure of 35 psi (lb/sq.in.). There are no fire flow requirements in agency statutes or rules.

Passage of the bill would result in some additional administrative costs to the TCEQ relating to rulemaking, inspections, and compliance review. These additional costs are expected to be reasonably absorbed within the agency's existing resources.

Local Government Impact

A utility serving a municipality with a population over 655,000 that does not currently maintain adequate pressure at fire hydrants could incur expenses associated with the installation of new water lines, additional storage, service pumps and increased water supply capacities. The cost would depend on the size of the service area and the pressure under the current system.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 26, 2007

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

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

IN RE: HB1391 by Turner (Relating to the authority to regulate certain water and sewage utilities to ensure public safety in residential areas.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1391, As Introduced: a negative impact of (\$690,666) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$361,583)
2009	(\$329,083)
2010	(\$329,083)
2011	(\$329,083)
2012	(\$329,083)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>GENERAL REVENUE FUND</i> 1	Change in Number of State Employees from FY 2007
2008	(\$361,583)	5.0
2009	(\$329,083)	5.0
2010	(\$329,083)	5.0
2011	(\$329,083)	5.0
2012	(\$329,083)	5.0

Fiscal Analysis

The bill would require that the regulatory authority for a retail public utility serving a residential area adopt public safety service standards, including standards for maintaining sufficient water pressure for service to fire hydrants. The bill would require that the Texas Commission on Environmental Quality (TCEQ) assess residential areas to ensure that the regulatory authority for the area has adopted standards as prescribed in the bill, and that all retail public utilities serving the residential area are complying with those standards. In addition the bill would direct the TCEQ to require a city acting as a regulatory authority to make appropriate revisions to the city's safety standards if the commission determines that the standards are inadequate. Finally, the bill would direct the TCEQ to require violators to comply within a reasonable time as established by the agency.

Methodology

Current state statutes and TCEQ rules only require public water systems to provide potable water for human use, and to maintain a minimum pressure of 35 pounds per square inch. According to the TCEQ, there currently are no fire flow requirements in agency statutes or rules. The bill would require regulatory authorities to adopt public safety standards which include maintaining sufficient water pressure for service to fire hydrants.

The TCEQ would require three additional engineers to review public water system designs for compliance with maintenance of sufficient water pressure to fire hydrants and to review rate applications and bond applications that may result from water systems paying for water improvements. In addition, the TCEQ would need two additional natural resource specialists to provide guidance and assistance to regulatory authority for compliance with the public safety standards. This estimate assumes that costs to implement the bill would be paid for using General Revenue Funds because the General Revenue-Dedicated Water Resource Management Account No. 153 is not expected to have sufficient revenue to cover additional expenditures during the 2008-09 biennium.

Local Government Impact

There would be no significant fiscal impact to a regulatory authority for a retail public utility to adopt or revise the required public safety standards.

Costs to public utilities or municipalities to comply with a public safety standard established by the commission would depend on the number and nature of the standards and the deadlines established.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, JB, TL, KJG