

## **BILL ANALYSIS**

C.S.H.B. 632  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In the wake of Hurricane Ike, an estimated 20 percent of the water systems that serve more than seven million people in the affected region were out of services for various periods of time. Among the 85 percent of the water-related retail utilities that were in compliance with the current rules of the Texas Commission on Environmental Quality requiring them to have auxiliary generators in the event of an emergency, 25 percent of such generators failed to function or ran out of fuel. More than a week after the storm, there were at least 250,000 residents without water and an additional 625,000 others whose service status could not be determined due to poor communications planning and requirements. Continuation of water service in emergency situations, such as Hurricane Ike, is vital to public health and is often a key to survival when other resources such as electricity are either severely limited or completely absent.

C.S.H.B. 632 requires a retail public utility to adopt and submit to the Texas Commission on Environmental Quality for its approval an emergency preparedness plan to ensure continued services to customers in the event of power outages.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.H.B. 632 amends the Health and Safety Code to require a retail public utility that provides potable water service, or sewer service, or both, for compensation to adopt each year and submit to the Texas Commission on Environmental Quality (TCEQ) for its approval an emergency preparedness plan that ensures that, in the event of a local power outage during the next year, the utility maintains the ability to provide sewer services to all existing customers and water to the local distribution system with at least the minimum water pressure required under TCEQ rules.

C.S.H.B. 632 requires TCEQ to review and approve or disapprove an emergency preparedness plan and issue a notification of approval or a notification of the reasons for disapproval of the plan. The bill requires an emergency preparedness plan to provide for the maintenance of automatically starting auxiliary generators for that purpose or the retail public utility's participation in a recognized statewide mutual aid program, if TCEQ finds that the utility's participation in the program will provide the utility with access to auxiliary generators and other necessary aid or equipment sufficient for the utility to restore service not later than the 36th hour after the hour the local power outage begins.

C.S.H.B. 632 requires the retail public utility to include with the plan a proposed schedule for the regular servicing, testing, and operation of the generators that complies with TCEQ rules if a retail public utility's emergency preparedness plan provides for the maintenance of automatically starting auxiliary generators. The bill requires a retail public utility that maintains auxiliary

generators to maintain a log of the regular servicing, testing, and operation of the generators and submit a copy of the log to TCEQ with its yearly emergency preparedness plan. The bill authorizes TCEQ to inspect the log at any time before the retail public utility submits the log.

C.S.H.B. 632 requires TCEQ by rule to prescribe standards relating to the servicing, testing, and operation of auxiliary power generators used in the implementation of an emergency preparedness plan.

C.S.H.B. 632 authorizes TCEQ to impose an administrative penalty on a licensed person who violates the provisions in the bill or TCEQ rules. The bill limits the amount of the penalty to \$1,000 for each day a violation continues or occurs, with a maximum total penalty for a continuing violation of not more than \$10,000. The bill requires the amount of the penalty to be based on the seriousness of the violation, including its nature, circumstances, extent, and gravity; the number of violations and the person's history of previous violations; the amount necessary to deter a future violation; the person's efforts to correct the violation; and any other matter that justice may require. The bill authorizes the enforcement of an administrative penalty to be stayed during the time the order for the penalty is under judicial review, if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. The bill authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of TCEQ to contest the affidavit as provided by those rules of civil procedure. The bill authorizes the attorney general to sue to collect an administrative penalty, and provides that a proceeding to impose an administrative penalty is a contested case under the Administrative Procedure Act. The bill authorizes TCEQ, in addition to assessing an administrative penalty, to revoke a retail public utility's license to operate.

C.S.H.B. 632 requires TCEQ to adopt the requisite rules not later than December 1, 2009, and requires a retail utility subject to the requirements for an auxiliary generator to comply with commission rules on the subject not later than January 31, 2010.

C.S.H.B. 632 makes its provisions applicable only to a retail public utility that serves customers in a county any territory of which is located not more than 100 miles from the Gulf of Mexico.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 632 adds a provision not in the original requiring a retail public utility to adopt and submit an emergency preparedness plan to the Texas Commission on Environmental Quality (TCEQ) for its approval and sets forth requirements for the plan and the review and approval of the plan.

C.S.H.B. 632 removes provisions from the original requiring a retail public utility to incorporate and maintain auxiliary power generators, and TCEQ by rule to create and implement an inspection schedule that ensures the inspection of each retail public utility for compliance at least once each 12-month period.

C.S.H.B. 632 adds a provision not in the original making its provisions applicable only to a retail public utility that serves customers in a county any territory of which is located not more than 100 miles from the Gulf of Mexico.