

BILL ANALYSIS

C.S.H.B. 3550
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Section 5.1175, Water Code, limits the length of payment plans for civil or administrative penalties for small business to a maximum of 12 months. Changing the 12-month limit to 36 months will give the Texas Commission on Environmental Quality (the "commission") greater flexibility with small businesses that may not have the resources to come into compliance at the rate of larger businesses, especially if engineering costs and capital expenditures are required.

Section 11.559, Water Code, contains language that provides for the discontinuation of the Concho River watermaster program based on a majority referendum vote of current water right holders in the Concho River watermaster area. Deletion of Section 11.559, Water Code, would provide statutory consistency for all three of the commission's watermaster programs. Further, the Concho watermaster is currently reviewing data to determine where to locate several real time flow measurement stations within the Concho watermaster jurisdictional area. These stations will assist in the protection of threatened senior water rights, add transparency to the Concho's operations by making such data available to the public, and assist in possible future implementation of unappropriated environmental flow regimes as per S.B. 3, 80th Legislature, Regular Session, 2007. As such, deletion of Section 11.559, Water Code, will increase the water right permit holders' comfort level that they will not be expending funds for a program that could be eliminated based on a referendum vote by a group of dissatisfied customers, rather they will be funding changes or modifications that will benefit them directly.

Section 13.187(f), Water Code, requires investor owned utility rate hearings to be held locally if more than half of the customers reside in a county with a population of more than 2.5 million (Harris County). Removing this requirement will treat Harris County the same as all other counties.

Under current law, the authority to establish an escrow account or set an interim rate resides with the commission commissioners or an Administrative Law Judge after the State Office of Administrative Hearings has taken jurisdiction over the application. The executive director of the commission can suspend a rate increase for defective notice or if the application was filled out incorrectly, but these suspensions are only effective until the applicant corrects the deficiency, which may only take a few days. The commissioners may suspend a rate increase for a maximum of 150 days if the commission has received the minimum number of protests to trigger a hearing. The requirement that the executive director request commission approval to escrow, suspend, or set interim rates results in a delay of six to nine months in establishing an escrow account, or in setting an interim rate after a rate application has been filed. Current law also creates an additional procedural step for suspending a rate increase in cases where the commission has received the minimum number of protests to trigger a hearing. Allowing the executive director to establish an escrow account, set an interim rate, or suspend a rate increase would significantly shorten the time required to implement these options because the executive director could act shortly after the application was filed. Extending the length of time that a rate may be suspended once the commission has received the minimum number of protests to trigger a hearing would provide additional flexibility to the executive director in cases where a longer suspension is warranted.

Section 13.242(c), Water Code, authorizes small water utilities with fewer than 15 connections to be classified as exempt. These utilities do not have to obtain a Certificate of Convenience and Necessity, but must register with the commission and are allowed to operate under simplified rate and service rule requirements. The law currently does not allow an exemption for small

sewer utilities. Allowing an exemption for small sewer utilities would remove the distinction between water and sewer utilities.

Applications to dissolve an inactive district or to convert a district to another type are typically uncontested but must be set for commission agenda due to the requirements in Sections 49.321, 49.322, 49.324, 54.030, 54.031, 54.032, and 54.033, Water Code, to conduct a hearing on these applications. Similarly, contracts between retail public utilities designating areas and customers to be served are typically uncontested but must be set on commission agenda due to the requirement in Section 13.248, Water Code, to hold a hearing prior to approval. Removing the hearing requirement and allowing the executive director to approve these applications would expedite the processing of these requests.

This bill would also reestablish a portion of the 2001 commission Sunset legislation (H.B. 2912, 77th Legislature, Regular Session) relating to the clean rivers program (CRP) that the commission believes was inadvertently negated with the passage of S.B. 3 during the 80th Legislature, Regular Session, 2007. The 2001 Sunset legislation consolidated the CRP dedicated fee with the wastewater treatment inspection fee. The primary purpose for the CRP fee was to pay for water quality monitoring and assessments conducted by river authorities. The Sunset legislation also enacted other changes to effectuate the fee consolidation, including deletion of the following provisions from Section 26.0135(h), Water Code: a \$5,000,000 annual limit on recovery of costs; a requirement that revenue be deposited in the water resource management account and that it be used only for the purposes of Section 26.0135(h); a limit of 10 percent of annual recovered costs to be applied to overhead related to implementation of Section 26.0135(h) and regional water quality assessments; and a provision requiring the commission to file a written report with the governor, lieutenant governor, and speaker accounting for costs recovered.

The purpose behind the Sunset legislation's consolidation of the water quality fee funds was to provide the agency with the flexibility necessary to best manage its limited funding resources to meet the needs of its water quality programs. The commission believes the limitations that were necessary for the stand-alone CRP fee but which were struck when the funds were consolidated, were inadvertently reinstated without any change being made to the consolidated fee fund structure. The limitations that existed for what was previously a stand-alone fee for the CRP program are inconsistent with the intent of the Sunset legislation's consolidation of the agency's water quality programs fees.

The recommendation presented here will reestablish what the commission believes to be an inadvertent negating of the Sunset legislation and is consistent with current agency rules and operating practices.

C.S.H.B. 3550 increases the length of a payment plan for civil or administrative penalties from 12 months to 36 months. The bill repeals a provision relating to the Concho River watermaster program to provide statutory consistency for all three of the commission's watermaster programs. The bill makes several changes granting the executive director of the commission the same authority as the commission, provides that a small sewer utility is exempt from the requirement to obtain a certificate of convenience and necessity, and removes the hearing requirement in a dissolution of a district.

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 4 of this bill.

ANALYSIS

SECTION 1. Amends Section 5.1175, Water Code, as follows:

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. Subsection (a) Authorizes, rather than requires, the commission by rule to allow payment of penalty in periodic installments. Deletes language limiting application of the installment payment provisions to small businesses and replaces it with broader language of "person."

Subsection (b) Deletes a provision requiring a rule relating to payment by installment to classify small businesses by their net annual receipts and number of employees and a provision prohibiting a business that is a wholly owned subsidiary of a corporation from qualifying as a small business.

Subsection (c) Increases the time period over which the payment to the commission of a monetary civil or administrative penalty may be made to 36 months, rather than 12 months.

SECTION 2. Amends Section 13.043(h), Water Code, as follows:

Subsection (h) Provides that the commission or executive director may establish interim rates until a final decision is made in an appeal filed under certain subsections. Deletes a provision that authorizes the commission, on a motion by the executive director or by the appellant, to establish interim rates.

SECTION 3. Amends Sections 13.187(f), (i), (j), (k), (l), (n), and (o), Water Code, as follows:

Subsection (f) Deletes language that requires a water rate change hearing to be held at a location in the county if more than half the ratepayers of the utility receive service in a county with a population of more than 2.5 million.

Subsection (i) grants the executive director the same authority as the regulatory authority in a water rate increase proceeding.

Subsection (j) grants the executive director the same authority as the regulatory authority to authorize the release of funds to the utility during the pendency of a water rate increase proceeding.

Subsection (k) grants the executive director the same authority as the regulatory authority to suspend the effective date of a proposed rate change for no longer than 250 days, rather than 150 days.

Subsection (l) grants the executive director the same authority as the regulatory authority to fix interim rates to remain in effect until a final determination is made on the proposed rate.

Subsection (n) grants the executive director the same authority as the regulatory authority to require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or interim rate.

Subsection (o) Provides language on a final determination on the rates by a regulatory authority other than the commission of the executive director.

SECTION 4. Amends Section 13.242(c), Water Code, as follows:

Subsection (c) Authorizes the commission by rule to give a municipality, utility, or water supply corporation permission to render retail water and sewer service without a certificate of public convenience and necessity.

SECTION 5. Amends Section 13.248, Water Code, as follows:

Sec. 13.248. **CONTRACTS VALID AND ENFORCEABLE.** Grants the executive director the same authority as the commission to approve contracts between retail public utilities. Deletes a related hearing requirement.

SECTION 6. Amends Section 26.0135(h), Water Code, as follows:

Subsection (h) Deletes language requiring the commission to apportion, assess, and recover reasonable costs of administering watershed and water quality monitoring programs from users of water and wastewater permit holders in a watershed. Deletes language requiring water quality

monitoring program funds to be equitably apportioned among basins. Deletes language relating to the rules concerning apportionment, assessment, and recovery of those costs and the disposition of those funds. Deletes the requirement that the commission, assisted by a river authority, file a written report accounting for the costs.

SECTION 7. Amends Section 49.321, Water Code, as follows:

Sec. 49.321. DISSOLUTION AUTHORITY. Grants the executive director the same authority as the commission to dissolve a district. Deletes the related hearing requirements.

SECTION 8. Amends Section 49.324, Water Code, as follows:

Sec 49.324. ORDER OF DISSOLUTION. Provides that the commission or the executive director may order a district dissolved if the commission or executive director finds that for five consecutive periods the district performs none of the functions for which it was created and has no outstanding bonded indebtedness.

SECTION 9. Amends Section 49.326(a), Water Code, as follows:

Subsection (a) Provides language concerning appeals from an order, rather than a commission order.

SECTION 10. Amends Section 54.030(b), Water Code, as follows:

Subsection (b) Provides that the resolution by a district to convert to a certain type of municipal utility district request that the commission approve the conversion of the district. Deletes language concerning a hearing.

SECTION 11. Amends Section 54.032, Water Code, as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. Subsection (a) Deletes language concerning a hearing.

Subsection (b) Provides that the notice be published once a week for two consecutive weeks. Deletes language regarding publication timing before a hearing date.

Subsection (c) Provides that the notice shall set out the resolution in full and notify all interested persons how they may comment for or against the resolution. Deletes language regarding a hearing time and place in notice. Deletes language regarding appearing and offering testimony.

SECTION 12. Amends Section 54.033, Water Code, as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. Grants the executive director the same authority as the commission to enter an order regarding the conversion of a district and makes conforming changes.

SECTION 13. Repeals Sections 49.322 and 54.031, Water Code.

SECTION 14. Provides that the changes in law apply only to applications that occur on or after the effective date.

SECTION 15. Provides the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. The substitute provides that the commission by rule may, rather than must as in the original, allow payment of penalty in periodic installments. The substitute provides language addressing requirements and procedures of a person, rather than an entity as in the original.

SECTION 2. The substitute does not repeal Section 11.559, Water Code, as in the original. The substitute makes the same changes provided in Section 3 of the original.

SECTION 3. The substitute makes the same changes provided in Section 4 of the original.

SECTION 4. The substitute makes the same changes provided in Section 5 of the original. Deletes language referencing "of this code."

SECTION 5. The substitute makes the same changes provided in Section 6 of the original.

SECTION 6. The substitute makes the same changes provided in Section 7 of the original.

SECTION 7. The substitute makes the same changes provided in Section 8 of the original.

SECTION 8. The substitute makes the same changes provided in Section 10 of the original. Clarifies "the commission or executive director," rather than "it" of the original.

SECTION 9. The substitute does not repeal Section 49.322, Water Code, as in the original. The substitute amends Section 49.326(a), Water Code, by clarifying an order, rather than a commission order of the original.

SECTION 10. The substitute makes the same changes provided in Section 11 of the original.

SECTION 11. The substitute makes the same changes provided in Section 13 of the original.

SECTION 12. The substitute does not repeal Section 54.031, Water Code, as in the original. The substitute makes the same changes provided in Section 14 of the original and clarifies the commission and executive director, rather than "it" in the original.

SECTION 13. The substitute repeals Sections 49.322 and 54.031, Water Code, here rather than in the original Sections 9 and 12.

SECTION 14. Provides language from Section 15 of the original and clarifies that a rate application or appeal filed with the commission before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 15. Provides language from Section 16 of the original.