

BILL ANALYSIS

C.S.S.B. 361
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During the aftermath of Hurricane Ike, the availability of drinking water and effective waste water treatment was an immediate concern that grew as power outages continued. Within 75 miles of the coast, there are 1,287 community water systems. Twenty percent of the water systems serving approximately seven million people in the affected area were out of service for varying periods of time.

Of the municipal utility districts that had generators, roughly 25 percent failed to function or ran out of fuel. Fourteen percent of the waste water lift stations in the hurricane affected area discharged into open streams. Even nine days after the storm, nearly 250,000 people lacked running water.

C.S.S.B. 361 requires an affected utility district to adopt and submit for approval to TCEQ an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and to ensure the emergency operation of its water system during a power outage as soon as safe and practicable after a natural disaster.

RULEMAKING AUTHORITY

It is the Committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 13, Water Code, by adding Sections 13.1395 and 13.1396 as follows:

Section 1. Section 13.1395. STANDARDS OF EMERGENCY OPERATIONS. Subsection (a) Defines "Affected utility," "Emergency operations," and "Extended power outage."

Subsection (b) Requires that an affected utility, as defined in Subsection (a), ensure the emergency operation of its water system during an extended power outage as soon as safe and practicable following the occurrence of a natural disaster and to adopt an emergency preparedness plan ("plan") that demonstrates the utility's ability to provide emergency operations and to submit that plan to the Texas Commission on Environmental Quality ("TCEQ").

Subsection (c) Requires that TCEQ review a plan and, if TCEQ determines that the plan is not acceptable, to recommend changes to the plan. Requires TCEQ to make its recommendations on or before the 90th day after TCEQ receives the plan. Requires the plan, in accordance with TCEQ rules, to provide for one of the following: the maintenance of automatically starting auxiliary generators; the sharing of auxiliary generator capacity with one or more affected utilities; the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office; the use of portable generators capable of serving multiple facilities equipped with quick-connect systems; the use of on-site electrical generation or distributed generation facilities; hardening the electric transmission and distribution system serving the water system; for existing facilities, the maintenance of direct engine or right angle drives; or any other alternative determined by TCEQ to be acceptable.

Subsection (d) Requires that each affected utility that supplies, provides, or conveys surface water include in its emergency preparedness plan for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each facility necessary to provide water to its wholesale customers.

Subsection (e) Requires that TCEQ must adopt rules to implement the requirements for plans and the use of generators as an alternative to any rule requiring elevated storage.

Subsection (f) Requires that TCEQ must provide an affected utility with access to the commission's financial, managerial, and technical contractors to assist with compliance with the plan submission deadline.

Subsection (g) Requires that TCEQ must create, by rule, a plan template for use by an affected utility when submitting a plan under this section. TCEQ's template must include: a list and explanation of the preparations an affected utility may make for TCEQ to approve the utility's plan; and a list of all commission rules and standards pertaining to plans.

Subsection (h) Requires that an emergency generator used as part of a TCEQ-approved plan must be operated and maintained according to the manufacturer's specifications.

Subsection (i) Requires to inspect each utility to ensure its compliance with the approved plan.

Subsection (j) Authorizes TCEQ to grant a waiver of the plan, or generator requirements, to an affected utility if TCEQ determines that compliance with the requirements will cause a significant financial burden on the utility's customers.

Subsection (k) Authorizes an affected utility to adopt and enforce limitations on water use while the utility is providing emergency operations.

Subsection (l) Provides that information furnished by an affected utility is confidential and not subject to disclosure under Chapter 552, Government Code (commonly referred to as the Texas Public Information Act).

Section 13.1396. COORDINATION OF EMERGENCY OPERATIONS. Subsection (a) Defines "Affected utility," "County judge," "Electric utility," and "Retail electric provider."

Subsection (b) Requires that a utility must submit to the county judge, county office of emergency management, Public Utility Commission ("PUC"), and governor's office of emergency management, a copy of: the affected utility's plan; and a copy of TCEQ's notification to the affected utility of acceptance of the plan.

Subsection (c) Requires that the affected utility must provide the county judge, county office of emergency management, PUC, and governor's office of emergency management: information regarding the location and description of all water and wastewater facilities that qualify for critical load status; and the emergency contact information for the utility, including the name and telephone number for the person and alternative person who will serve as the point of contact, as well as the utility's mailing address.

Subsection (d) Requires that the utility must immediately update the aforementioned information when changes occur.

Subsection (e) Requires that the county judge of each county that receives the required information must, not later than the 1st of February of each year: submit that information to each retail electric provider selling electric energy and each electric utility providing electric transmission and distribution service to the affected utilities; and submit for each affected utility any forms reasonably required by an electric utility or retail electric provider for determining critical load status, including a critical care eligibility determination form or similar form.

Subsection (f) Requires that an electric utility and retail electric provider determine whether the facilities of the affected utility qualify for critical load status under rules adopted by PUC by the 1st of May of each year.

Subsection (g) Requires an electric utility, if the electric utility and the retail provider determines that an affected utility's facilities do not qualify for critical load status, provide a detailed explanation of the electric utility's determination to each county judge that submitted the information within 30 days of the receipt of information from the county judge of each county.

SECTION 2. Requires that TCEQ adopt standards required by the Act by December 1, 2009. Requires that TCEQ conduct at least two public hearings in Harris County as part of the rulemaking process. Requires that TCEQ must issue a report to the governor, lieutenant governor and speaker of the house of representatives, if TCEQ is unable to adopt the required standards by December 1, 2009. Requires that each affected utility provide information required by the Act to each appropriate county judge and office of emergency management, PUC, and office of emergency management of the governor by November 1, 2009. Requires that each affected utility submit an emergency preparedness plan by March 1, 2010. The bill requires that each affected utility shall implement its approved plan by July 1, 2010.

SECTION 3. Provides the effective date of this Act.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 361 differs from the original by redefining "affected utility" to include a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer in a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more as an alternative to a county with a population of 3.3 million or more. The substitute adds a definition of "retail electric provider" not included in the original.

C.S.S.B. 361 differs from the original by removing a provision requiring the Texas Commission on Environmental Quality ("TCEQ") to approve or disapprove an emergency preparedness plan and to issue a notification of approval or a notification of the reasons for disapproval of the plan. The substitute adds provisions not included in the original requiring TCEQ to recommend changes to the plan before a certain date if TCEQ determines that the plan is not acceptable.

C.S.S.B. 361 differs from the original by adding an alternative determined by TCEQ to be acceptable to the list of items one of which TCEQ is required to provide for in an emergency preparedness plan.

C.S.S.B. 361 differs from the original by removing provisions that set deadlines by statutory provision and by setting those deadlines in transition language instead. The substitute differs from the original by removing the deadline by which each affected utility is required to include in its emergency preparedness plan certain provisions relating to providing water to its wholesale customers during an emergency. The substitute requires each affected utility required to submit an emergency preparedness plan to submit its plan not later than March 1, 2010, rather than June 1, 2011, as in the original. The substitute differs from the original by removing the deadline by which TCEQ is required to adopt rules to implement the provisions relating to standards of emergency operations as an alternative to any rule requiring elevated storage. The substitute requires an affected utility to implement its emergency preparedness plan as approved by TCEQ not later than July 1, 2010, rather than June 1, 2011, as in the original.

C.S.S.B. 361 authorizes TCEQ to grant a waiver of the requirements of the bill's provisions to an affected utility if TCEQ determines that compliance with the bill's provisions will cause a significant financial burden on customers of the affected utility, whereas the original prohibited

TCEQ from granting a waiver of the requirements to any affected utility.

C.S.S.B. 361 requires each affected utility to submit specified information to certain entities not later than November 1, 2009, rather than December 31, 2009, as in the original.

C.S.S.B. 361 clarifies that the county judge of each county that receives the information described above is required to submit the information to each retail electric provider that sells electric power to an affected utility and each electric utility that provides transmission and distribution service to an affected utility not later than February 1 of each year, rather than to relevant electric utilities not later than March 1 of each year, as in the original.

C.S.S.B. 361 differs from the original by specifying that, not later than May 1 of each year, rather than June 1 as in the original, each electric utility and each retail electric provider, rather than an electric utility that has received the information relating to an affected utility, is required to determine whether the facilities of the affected utility qualify for the critical load status.

C.S.S.B. 361 differs from the original by establishing that the requirement of an electric utility to provide a detailed explanation of the electric utility's determination that an affected utility's facilities do not qualify for critical load status is also applicable to a retail electric provider. The substitute removes a provision included in the original establishing that information received under provisions relating to the coordination of emergency operations is confidential and not subject to disclosure under state law governing public information.

C.S.S.B. 361 differs from the original by requiring TCEQ, not later than December 1, 2009, to adopt standards of emergency operations and to issue a report to governor, lieutenant governor, and speaker of the house of representatives if TCEQ is unable to adopt the standards by that date. The substitute adds a provision not included in the original requiring TCEQ, as part of the rulemaking process, to conduct at least two hearings in Harris County.