

BILL ANALYSIS

C.S.S.B. 1846
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law authorizes the Texas Commission on Environmental Quality (TCEQ) to allow a respondent in an enforcement case to pay an administrative penalty in installments over a period of up to 12 months under certain conditions. This bill changes the 12-month limit to 36 months, giving TCEQ greater flexibility for persons that may not have the resources to come into compliance at the rate of larger businesses.

C.S.S.B. 1846 amends current law to address the powers and duties of TCEQ and related entities. The bill requires a person who owns or operates a water well under certain conditions to ensure that the well water is treated by an approved chlorination system. The bill grants the executive director certain authority currently held by TCEQ, including the authority to issue administrative orders that assess penalties, to issue orders that order corrective measures, and to establish interim rates. The bill authorizes a person to pay a penalty in periodic installments. The bill adds provisions relating to the setting of interim rates and a utility facilities construction and improvement charge and repeals provisions relating to the setting of public hearing dates.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 2, 5, 8, and 9 of this bill.

ANALYSIS

C.S.S.B. 1846 amends the Health and Safety Code to require a person who owns or operates a water well that, for compensation, provides water to not fewer than 3 and not more than 14 residences for any purpose to ensure that the well water is treated with chlorine or a chlorine compound, in addition to any applicable requirements for certain minimum sanitation standards under law. The bill requires the chlorination system for the well water to be designed by a professional water engineer. The bill requires the owner or operator of the well to submit the plans to the Texas Commission on Environmental Quality (TCEQ) for approval before use of the chlorination system. The bill requires the owner or operator of the well to maintain the chlorination system and keep the system in functional operating condition. The bill requires the owner or operator of the well, in coordination with the local health department, to perform testing for foreign organisms in the water every six months. The bill requires the owner or operator of the well to provide TCEQ and the recipients of water from the well with the results of the testing. The bill makes such provisions effective September 1, 2010.

C.S.S.B. 1846 amends the Water Code to authorize, rather than require, TCEQ by rule to allow a person, rather than a small business, that owes a monetary civil or administrative penalty imposed for certain violations to pay the penalty in periodic installments and makes a conforming change that reflects the amendment of this provision by requiring a TCEQ rule to provide for a periodic installment procedure for a person, rather than a qualified small business,

to apply for permission to pay over time. The bill increases from 12 months to 36 months the maximum time period over which the penalty may be paid. The bill removes a provision requiring a rule relating to payment by installment to classify small businesses by their net annual receipts and number of employees, and removes a provision prohibiting a business that is a wholly owned subsidiary of a corporation from qualifying as a small business.

C.S.S.B. 1846 authorizes TCEQ to delegate to the executive director the authority to issue an administrative order including the authority to assess penalties or order corrective measures to ensure compliance with the provisions of the Water Code and the Health and Safety Code within TCEQ's jurisdiction as provided by provisions of the Water Code relating to TCEQ's jurisdiction and rules adopted under those provisions.

C.S.S.B. 1846 authorizes the executive director of TCEQ, as an alternative to TCEQ, to establish interim rates to be in effect until a final decision is made in an appeal to TCEQ by ratepayers of a decision rendered by the governing body of an entity affecting the ratepayers' water, drainage, or sewer rates. The bill removes a provision that authorizes TCEQ to establish interim rates on a motion by the executive director or by the appellant. The bill requires a retail public utility, if TCEQ sets a final rate that is lower than the interim rate, to refund or credit the difference between the interim rate and the final rate plus interest as determined by TCEQ, unless otherwise agreed to by the parties to the proceeding. The bill authorizes the retail public utility, if TCEQ sets a final rate that is higher than the interim rate, to collect the difference between the interim rate and the final rate unless otherwise agreed to by the parties to the proceeding.

C.S.S.B. 1846 requires rules adopted under provisions relating to TCEQ's requirement to fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility to require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the utility's accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in Texas.

C.S.S.B. 1846 authorizes a utility to consolidate more than one system under a single tariff on a regional or statewide basis under a specified condition and removes a requirement that such a utility may consolidate more than one system under a single tariff only if the systems under the tariff are substantially similar in terms of facilities, quality of service, and cost of service.

C.S.S.B. 1846 removes a provision that requires a water rate change hearing to be held at a location in a county with a population of more than 2.5 million if more than half the ratepayers of the utility receive service in that county. The bill grants to the executive director, in a water rate increase proceeding, the same authority as a regulatory authority. The bill makes conforming changes to provisions relating to an escrow account that receives rate increase funds pending final action in a rate proceeding and relating to the suspension of a rate change effective date, that reflect the bill's authorizing the executive director to exercise certain authority already held by the regulatory authority, and makes other conforming changes relating to the handling of interim rates and an escrow account. The bill increases from not longer than 150 days to not longer than 250 days the maximum number of days the proposed rate change may be suspended by TCEQ, and gives the executive director the same authority as TCEQ to suspend the increase.

C.S.S.B. 1846 authorizes the executive director of TCEQ, as an alternative to TCEQ, to fix interim rates to remain in effect until a final determination is made on the proposed rate. The bill authorizes the regulatory authority to fix interim rates at any time during the pendency of the rate proceeding, but authorizes the executive director to fix interim rates not later than the 120th day after the proposed effective date of the proposed rate change. The bill prohibits interim rates established by the executive director from being lower than the rates on the utility's approved tariff or higher than those in the application of the utility. The bill requires the executive director, in establishing an interim rate, to consider only representative operating data for the test year proposed in the application of the utility. The bill authorizes the executive director to request additional data or information for the test year. The bill requires the executive director,

in establishing an interim rate, to consider:

- whether the interim rate will preserve the financial integrity of the utility during the period that the interim rate is in effect;
- whether the interim rate will provide sufficient money for the capital improvements necessary to provide facilities capable of providing adequate and continuous utility service during the period that the interim rate is in effect;
- whether the interim rate equitably distributes costs across and is consistent in application to each class of affected customers; and
- any other factor that the executive director considers adequately balances the public interest and that of the utility.

The bill requires the executive director, if the executive director establishes an interim rate, to issue an order establishing the interim rate that states the basis on which the executive director established the interim rate, after taking into consideration such factors.

C.S.S.B. 1846 authorizes a water and sewer utility to assess a utility facilities construction and improvement charge to recover the depreciation and return on investment of a utility facilities construction and improvement project that is completed and placed into service between two consecutive statements of intent to change the utility's rates or tariff filed under provisions related to a statement of intent to change rates and serves the utility's certificated service area, including a facility used for the production, transmission, storage, distribution, or provision of potable or recycled water to the public or the collection, transportation, treatment, or disposal of sewage. The bill requires TCEQ by rule to require a utility that proposes to assess such a charge to file a tariff establishing a just and reasonable manner for calculating the charge and to receive the executive director's approval of the tariff.

C.S.S.B. 1846 requires TCEQ, in adopting rules related to the assessment of a utility facilities construction and improvement charge, to ensure that:

- not later than the 60th day before a utility's proposed inclusion of a charge or proposed increase of a charge in a tariff, the utility submits to the executive director for review of a project's eligibility a written notice containing the amount and proposed implementation date of the proposed charge or increase of a charge, a list of completed, eligible capital projects, and related depreciation and return on investment for which the utility seeks reimbursement through the charge or increase, and a calculation of the projected total annual increase in revenue due to the charge or increase;
- the total amount the utility is authorized to recover annually through a charge and the amount the utility actually recovers are subject to annual audit by the executive director;
- the amount of the charge the utility requests authorization to assess is based on the amount necessary to ensure that the charge yields a rate of return on invested capital that is equal to the rate of return approved for the utility in the utility's most recent approved base rate or tariff change application or the rate of return proposed by the utility, if the rates in the utility's most recent base rate or tariff change application were approved by settlement;
- the cumulative annual amount the utility proposes to recover from the charge does not exceed an amount equal to 10 percent of the utility's annual revenue;
- the utility does not implement an increase under the bill's provisions more often than twice every calendar year;
- the charge is applied to each customer included in the tariff;
- the utility provides to each customer written notice of the charge on the initial tariff filing that proposes to implement the charge; and
- the charge is subject to a true-up or reconciliation at the utility's next rate case.

The bill provides that the implementation of a charge or an increase in a charge is not subject to a contested case hearing under the Administrative Procedure Act. The bill specifies that the bill's provisions relating to such a construction and improvement charge do not apply to a utility that has in place a negotiated stay-out agreement on September 1, 2009.

C.S.S.B. 1846 authorizes TCEQ by rule to give a municipality, utility, or water supply corporation permission to render retail sewer service without a certificate of public convenience and necessity.

C.S.S.B. 1846 gives the executive director the same authority as TCEQ to approve contracts between retail public utilities and removes a provision making the approval subject to public hearing.

C.S.S.B. 1846 removes language requiring TCEQ 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 according to the records of TCEQ. The bill removes language requiring water quality monitoring program funds to be equitably apportioned among basins. The bill removes provisions relating to the rules concerning apportionment, assessment, and recovery of costs and the disposition of recovered costs and removes the requirement that TCEQ, assisted by a river authority, file a written report accounting for the costs.

C.S.S.B. 1846 gives the executive director of TCEQ the same authority as TCEQ to dissolve or convert a district, removes references relating to a public hearing, and makes conforming changes.

C.S.S.B. 1846 repeals Sections 49.322 and 54.031, Water Code, relating to setting a date for a hearing for a district dissolution and establishing a date for a hearing regarding conversion of a municipality utility district, respectively.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1846 adds provisions not in the original requiring a person who owns or operates a water well that, for compensation, provides water to not fewer than 3 and not more than 14 residences for any purpose, to ensure that the well water is treated with chlorine or a chlorine compound, in addition to any applicable requirements under law. The substitute adds provisions not in the original relating to design, approval, and testing requirements of such a well.

C.S.S.B. 1846 adds a provision not in the original authorizing the Texas Commission on Environmental Quality (TCEQ) to delegate to the executive director the authority to issue an administrative order including the authority to assess penalties or order corrective measures to ensure compliance with the provisions of the Water Code and the Health and Safety Code within TCEQ's jurisdiction and rules adopted under those provisions.

C.S.S.B. 1846 omits a provision in the original authorizing TCEQ or the executive director of TCEQ, in certain water rate appeal cases before TCEQ, to establish interim rates to be in effect until a final decision is made, rather than establishing a cap of not more than 250 days. The substitute omits a provision in the original prohibiting the interim rates from being lower than the rates on the utility's approved tariff immediately before the filing of the notice of intention to change rates and omits a provision authorizing TCEQ or the executive director to base the interim rates on information in the rate change application. The substitute differs from the original by specifying a retail public utility as the utility to which certain provisions of the bill relating to an interim rate are applicable.

C.S.S.B. 1846 adds a provision not in the original requiring rules adopted under provisions relating to TCEQ's requirement to fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility to require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the utility's

accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in Texas.

C.S.S.B. 1846 adds a provision not in the original authorizing a utility to consolidate more than one system under a single tariff on a regional or statewide basis if the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

C.S.S.B. 1846 adds a provision not in the original authorizing the executive director of TCEQ to fix interim rates, during the pendency of the rate proceeding, to remain in effect until a final determination is made on the proposed rate. The substitute adds provisions not in the original authorizing the executive director to fix interim rates not later than the 120th day after the proposed effective date of the proposed rate change and prohibiting such interim rates from being lower than the rates on the utility's approved tariff or higher than those in the application of the utility. The substitute adds provisions not in the original requiring the executive director, in establishing an interim rate, to make several considerations and to issue an order establishing the interim rate that states the basis on which the executive director established the interim rate.

C.S.S.B. 1846 adds provisions not in the original authorizing a water and sewer utility to assess a utility facilities construction and improvement charge to recover the depreciation and return on investment of certain utility facilities construction and improvement projects. The substitute adds a provision not in the original requiring TCEQ by rule to require a utility that proposes to assess such a charge to file a tariff establishing a just and reasonable manner for calculating the charge and to receive the executive director's approval of the tariff. The substitute adds provisions not in the original requiring the rules to make certain assurances.

C.S.S.B. 1846 adds certain conforming transition provisions and adds an effective date for a certain provision in the substitute.