

By: Turner of Harris, Smith of Harris,  
Callegari, Davis of Harris, Bonnen

H.B. No. 632

Substitute the following for H.B. No. 632:

By: Solomons

C.S.H.B. No. 632

A BILL TO BE ENTITLED

AN ACT

relating to the requirement that retail water and utility services  
adopt an emergency preparedness plan for use during a local power  
outage; providing an administrative penalty.

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 341.0359 to read as follows:

Sec. 341.0359. CONTINUATION OF SERVICE DURING LOCAL POWER  
OUTAGE. (a) This section applies 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.

(b) Each year, a retail public utility, as defined by  
Section 13.002, Water Code, shall adopt and submit to the  
commission for its approval an emergency preparedness plan that  
ensures that, in the event of a local power outage during the next  
year, the retail public utility maintains the ability to provide:

(1) water to the local distribution system with at  
least the minimum water pressure required under commission rules;  
and

(2) sewer services to all existing customers.

(c) The commission shall review and approve or disapprove an  
emergency preparedness plan submitted under Subsection (b) and  
issue a notification of approval or a notification of the reasons  
for disapproval of the plan. An emergency preparedness plan must

1 provide for:

2 (1) the maintenance of automatically starting  
3 auxiliary generators for that purpose; or

4 (2) the retail public utility's participation in a  
5 recognized statewide mutual aid program, if the commission finds  
6 that the utility's participation in the program will provide the  
7 utility with access to auxiliary generators and other necessary aid  
8 or equipment sufficient for the utility to restore service not  
9 later than the 36th hour after the hour the local power outage  
10 begins.

11 (d) If a retail public utility's emergency preparedness  
12 plan provides for the maintenance of automatically starting  
13 auxiliary generators, the retail public utility must include with  
14 the plan a proposed schedule for the regular servicing, testing,  
15 and operation of the generators that complies with commission  
16 rules. A retail public utility that maintains auxiliary generators  
17 shall maintain a log of the regular servicing, testing, and  
18 operation of the generators and shall submit a copy of the log to  
19 the commission with its yearly emergency preparedness plan. The  
20 commission may inspect the log at any time before the retail public  
21 utility submits the log to the commission.

22 (e) The commission by rule shall prescribe standards  
23 relating to the servicing, testing, and operation of auxiliary  
24 power generators used in the implementation of an emergency  
25 preparedness plan submitted under Subsection (b).

26 (f) The commission may impose an administrative penalty on a  
27 person licensed under this chapter who violates this section or a

1 rule or order adopted under this section. The amount of the penalty  
2 may not exceed \$1,000 for each day a violation continues or occurs,  
3 with a maximum total penalty for a continuing violation of not more  
4 than \$10,000. The amount of the penalty shall be based on:

5 (1) the seriousness of the violation, including the  
6 nature, circumstances, extent, and gravity of the violation;

7 (2) the number of violations and the person's history  
8 of previous violations;

9 (3) the amount necessary to deter a future violation;

10 (4) the person's efforts to correct the violation; and

11 (5) any other matter that justice may require.

12 (g) The enforcement of an administrative penalty ordered  
13 under this section may be stayed during the time the order is under  
14 judicial review if the person pays the penalty to the clerk of the  
15 court or files a supersedeas bond with the court in the amount of  
16 the penalty. A person who cannot afford to pay the penalty or file  
17 the bond may stay the enforcement by filing an affidavit in the  
18 manner required by the Texas Rules of Civil Procedure for a party  
19 who cannot afford to file security for costs, subject to the right  
20 of the commission to contest the affidavit as provided by those  
21 rules.

22 (h) The attorney general may sue to collect an  
23 administrative penalty assessed under this section.

24 (i) A proceeding to impose an administrative penalty is a  
25 contested case under Chapter 2001, Government Code.

26 (j) In addition to assessing an administrative penalty for a  
27 violation of this section, the commission may revoke a retail

1 public utility's license to operate.

2 SECTION 2. Not later than December 1, 2009, the Texas  
3 Commission on Environmental Quality shall adopt rules as required  
4 by Section 341.0359, Health and Safety Code, as added by this Act.

5 SECTION 3. A retail public utility required to adopt and  
6 submit an emergency preparedness plan under Section 341.0359,  
7 Health and Safety Code, as added by this Act, shall comply with  
8 Texas Commission on Environmental Quality rules adopted under that  
9 section not later than January 31, 2010.

10 SECTION 4. This Act takes effect immediately if it receives  
11 a vote of two-thirds of all the members elected to each house, as  
12 provided by Section 39, Article III, Texas Constitution. If this  
13 Act does not receive the vote necessary for immediate effect, this  
14 Act takes effect September 1, 2009.