

By: Flynn

H.B. No. 1784

A BILL TO BE ENTITLED

AN ACT

relating to the rates charged by a water and sewer utility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 13.043(e) and (h), Water Code, are amended to read as follows:

(e) In an appeal under Subsection (b) of this section, the commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may establish the effective date for the commission's rates at the original effective date as proposed by the service provider and may order refunds or allow a surcharge to recover lost revenues. The commission may not allow recovery of any rate case ~~[reasonable]~~ expenses incurred by the retail public utility in the appeal proceedings. The commission may consider only the information that was available to the governing body at the time the governing body made its decision ~~[and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings]~~. The rates established by the commission in an appeal under Subsection (b) of this section remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the commission determines that a financial hardship exists.

1 (h) The commission or executive director may~~[, on a motion~~
2 ~~by the executive director or by the appellant under Subsection (a),~~
3 ~~(b), or (f) of this section,]~~ establish interim rates to be in
4 effect until a final decision is made in an appeal filed under
5 Subsection (a), (b), or (f).

6 SECTION 2. Section 13.185(h), Water Code, is amended to
7 read as follows:

8 (h) The regulatory authority may not include for ratemaking
9 purposes:

10 (1) legislative advocacy expenses, whether made
11 directly or indirectly, including legislative advocacy expenses
12 included in trade association dues;

13 (2) costs of processing a refund or credit under
14 Section 13.187 ~~[of this chapter]; [or]~~

15 (3) rate case expenses incurred during the hearing
16 process; or

17 (4) any expenditure found by the regulatory authority
18 to be unreasonable, unnecessary, or not in the public interest,
19 including executive salaries, advertising expenses, legal
20 expenses, and civil penalties or fines.

21 SECTION 3. Sections 13.187(a), (d), (d-1), (e), (f), (k),
22 (l), and (o), Water Code, are amended to read as follows:

23 (a) A utility may not make changes in its rates except by
24 delivering a statement of intent to each ratepayer and with the
25 regulatory authority having original jurisdiction at least 120 ~~[60]~~
26 days before the proposed effective date of the proposed change. The
27 proposed effective date of the new rates must be the first day of a

1 billing period, and the new rates may not apply to service received
2 before the proposed effective date of the new rates. The statement
3 of intent must include:

4 (1) the information required by the regulatory
5 authority's rules;

6 (2) a billing comparison regarding the existing water
7 rate and the new water rate computed for the use of:

8 (A) 10,000 gallons of water; and

9 (B) 30,000 gallons of water; and

10 (3) a billing comparison regarding the existing sewer
11 rate and the new sewer rate computed for the use of 10,000 gallons,
12 unless the utility proposes a flat rate for sewer services.

13 (d) Except as provided by Subsection (d-1), if the
14 application or the statement of intent is not substantially
15 complete or does not comply with the regulatory authority's rules,
16 it may be rejected and the proposed effective date of the rate
17 change may be suspended until a properly completed application is
18 accepted by the regulatory authority and a proper statement of
19 intent is provided. The commission may also suspend the proposed
20 effective date of any rate change if the utility does not have a
21 certificate of public convenience and necessity or a completed
22 application for a certificate or to transfer a certificate pending
23 before the commission or if the utility is delinquent in paying the
24 assessment and any applicable penalties or interest required by
25 Section 5.701(n) of this code.

26 (d-1) Subject to Subsection (k), after [~~After~~] written
27 notice to the utility, a local regulatory authority may suspend the

1 proposed effective date of a rate change for not more than 90 days
2 from the proposed effective date[, ~~except that the suspension shall~~
3 ~~be extended by two days for each day a hearing exceeds 15 days. If~~
4 ~~the local regulatory authority does not make a final determination~~
5 ~~on the proposed rate before the expiration of the applicable~~
6 ~~suspension period, the proposed rate shall be considered approved.~~
7 ~~The approval is subject to the local regulatory authority's~~
8 ~~continuation of a hearing in progress].~~

9 (e) The regulatory authority shall hold a hearing on the
10 proposed rate increase if, [If,] before the 91st day after the
11 ~~[effective]~~ date the statement of intent was provided to the
12 authority and each ratepayer under Subsection (a) [of the rate
13 ~~change],~~ the regulatory authority receives a complaint from any
14 affected municipality, or from the lesser of 1,000 or 10 percent of
15 the ratepayers of the utility over whose rates the regulatory
16 authority has original jurisdiction[, ~~the regulatory authority~~
17 ~~shall set the matter for hearing].~~

18 (f) The regulatory authority may set the matter for hearing
19 on its own motion at any time within 120 days after the ~~[effective]~~
20 date the statement of intent was provided to the authority and each
21 ratepayer under Subsection (a) [of the rate change]. If more than
22 half of the ratepayers of the utility receive service in a county
23 with a population of more than 2.5 million, the hearing must be held
24 at a location in that county.

25 (k) If the regulatory authority sets the matter for
26 ~~[receives at least the number of complaints from ratepayers~~
27 ~~required for the regulatory authority to set]~~ a hearing under

1 Subsection (e), the regulatory authority shall [~~may~~], pending the
2 hearing and a decision, suspend the date the rate change would
3 otherwise be effective until the date the regulatory authority
4 issues a final decision on the matter. [~~Except as provided by~~
5 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~
6 ~~than:~~

7 [~~(1) 90 days by a local regulatory authority, or~~

8 [~~(2) 150 days by the commission.~~]

9 (1) At any time during the pendency of the rate proceeding
10 the regulatory authority or the executive director may fix interim
11 rates to remain in effect until a final determination is made on the
12 proposed rate.

13 (o) If the [~~a~~] regulatory authority does not set a hearing
14 on the proposed rate increase under Subsection (e) or (f), [~~other~~
15 ~~than the commission establishes interim rates or an escrow account,~~
16 ~~the regulatory authority must make a final determination on the~~
17 ~~rates not later than the first anniversary of the effective date of~~
18 ~~the interim rates or escrowed rates or]~~ the rates are automatically
19 approved as requested by the utility.

20 SECTION 4. Sections 13.187(i), (j), and (n), Water Code,
21 are repealed.

22 SECTION 5. This Act applies only to a statement of intent
23 filed on or after the effective date of this Act. A rate change to
24 which a statement of intent filed before the effective date of this
25 Act applies is governed by the law in effect on the date the
26 statement was filed, and that law is continued in effect for that
27 purpose.

1 SECTION 6. This Act takes effect September 1, 2009.