

By: King of Zavala

H.B. No. 3550

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Commission on Environmental Quality and related entities.

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

SECTION 1. Section 5.1175, Water Code, is amended to read as follows:

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) The commission by rule may ~~[shall]~~ allow a person who ~~[small business that]~~ owes a monetary civil or administrative penalty imposed for a violation of law within the commission's jurisdiction or for a violation of a license, permit, or order issued or rule adopted by the commission to pay the penalty in periodic installments. The rule must provide a procedure for a person ~~[qualified small business]~~ to apply for permission to pay the penalty over time.

(b) ~~[The rule must classify small businesses by their net annual receipts and number of employees. A business that is a wholly owned subsidiary of a corporation may not qualify as a small business under this section.]~~

~~[(c)]~~ The rule may vary the period over which the penalty may be paid or the amount of the periodic installments according to the amount of the penalty owed and the size of the business that owes the penalty. The period over which the penalty may be paid may not exceed 36 ~~[12]~~ months.

SECTION 2. Section 13.043(h), Water Code, is amended to

1 read as follows:

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

7 SECTION 3. Sections 13.187(f), (i), (j), (k), (l), (n), and  
8 (o), Water Code, are amended to read as follows:

9 (f) The regulatory authority may set the matter for hearing  
10 on its own motion at any time within 120 days after the effective  
11 date of the rate change. [~~If more than half of the ratepayers of the~~  
12 ~~utility receive service in a county with a population of more than~~  
13 ~~2.5 million, the hearing must be held at a location in that county.]~~

14 (i) The regulatory authority or the executive director,  
15 pending final action in a rate proceeding, may order the utility to  
16 deposit all or part of the rate increase received or to be received  
17 into an escrow account with a financial institution approved by the  
18 regulatory authority. Unless otherwise agreed to by the parties to  
19 the rate proceeding, the utility shall refund or credit against  
20 future bills all sums collected during the pendency of the rate  
21 proceeding in excess of the rate finally ordered plus interest as  
22 determined by the regulatory authority.

23 (j) For good cause shown, the regulatory authority or the  
24 executive director may authorize the release of funds to the  
25 utility from the escrow account during the pendency of the  
26 proceeding.

27 (k) If the regulatory authority receives at least the number

1 of complaints from ratepayers required for the regulatory authority  
2 to set a hearing under Subsection (e), the regulatory authority or  
3 the executive director may, pending the hearing and a decision,  
4 suspend the date the rate change would otherwise be effective.  
5 Except as provided by Subsection (d-1), the proposed rate may not be  
6 suspended for longer than:

7 (1) 90 days by a local regulatory authority; or

8 (2) 250 [~~150~~] days by the commission or executive  
9 director.

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

14 (n) For good cause shown, the regulatory authority or the  
15 executive director may at any time during the proceeding require  
16 the utility to refund money collected under a proposed rate before  
17 the rate was suspended or an interim rate was established to the  
18 extent the proposed rate exceeds the existing rate or the interim  
19 rate.

20 (o) If a regulatory authority other than the commission or  
21 the executive director establishes interim rates or an escrow  
22 account, the regulatory authority must make a final determination  
23 on the rates not later than the first anniversary of the effective  
24 date of the interim rates or escrowed rates or the rates are  
25 automatically approved as requested by the utility.

26 SECTION 4. Section 13.242(c), Water Code, is amended to  
27 read as follows:

1           (c) The commission may by rule allow a municipality or  
2 utility or water supply corporation to render retail water or sewer  
3 service without a certificate of public convenience and necessity  
4 if the municipality has given notice under Section 13.255 [~~of this~~  
5 ~~code~~] that it intends to provide retail water or sewer service to an  
6 area or if the utility or water supply corporation has less than 15  
7 potential connections and is not within the certificated area of  
8 another retail public utility.

9           SECTION 5. Section 13.248, Water Code, is amended to read as  
10 follows:

11           Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts  
12 between retail public utilities designating areas to be served and  
13 customers to be served by those retail public utilities, when  
14 approved by the commission or the executive director after public  
15 notice [~~and hearing~~], are valid and enforceable and are  
16 incorporated into the appropriate areas of public convenience and  
17 necessity.

18           SECTION 6. Section 26.0135(h), Water Code, is amended to  
19 read as follows:

20           (h) The commission shall apportion, assess, and recover the  
21 reasonable costs of administering the water quality management  
22 programs under this section [~~from users of water and wastewater~~  
23 ~~permit holders in the watershed according to the records of the~~  
24 ~~commission generally in proportion to their right, through permit~~  
25 ~~or contract, to use water from and discharge wastewater in the~~  
26 ~~watershed~~]. Irrigation water rights, non-priority hydroelectric  
27 rights of a water right holder that owns or operates privately owned

1 facilities that collectively have a capacity of less than two  
2 megawatts, and water rights held in the Texas Water Trust for terms  
3 of at least 20 years will not be subject to this assessment. The  
4 cost to river authorities and others to conduct water quality  
5 monitoring and assessment shall be subject to prior review and  
6 approval by the commission as to methods of allocation and total  
7 amount to be recovered. The commission shall adopt rules to  
8 supervise and implement the water quality monitoring, assessment,  
9 and associated costs. The rules shall ensure that water users and  
10 wastewater dischargers do not pay excessive amounts, ~~[that program~~  
11 ~~funds are equitably apportioned among basins,]~~ that a river  
12 authority may recover no more than the actual costs of  
13 administering the water quality management programs called for in  
14 this section, and that no municipality shall be assessed cost for  
15 any efforts that duplicate water quality management activities  
16 described in Section 26.177. ~~[The rules concerning the~~  
17 ~~apportionment and assessment of reasonable costs shall provide for~~  
18 ~~a recovery of not more than \$5,000,000 annually. Costs recovered by~~  
19 ~~the commission are to be deposited to the credit of the water~~  
20 ~~resource management account and may be used only to accomplish the~~  
21 ~~purposes of this section. The commission may apply not more than 10~~  
22 ~~percent of the costs recovered annually toward the commission's~~  
23 ~~overhead costs for the administration of this section and the~~  
24 ~~implementation of regional water quality assessments. The~~  
25 ~~commission, with the assistance and input of each river authority,~~  
26 ~~shall file a written report accounting for the costs recovered~~  
27 ~~under this section with the governor, the lieutenant governor, and~~

~~the speaker of the house of representatives on or before December 1 of each even-numbered year.]~~

SECTION 7. Section 49.321, Water Code, is amended to read as follows:

Sec. 49.321. DISSOLUTION AUTHORITY. After notice ~~[and hearing]~~, the commission or executive director may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

SECTION 8. Section 49.324, Water Code, is amended to read as follows:

Sec. 49.324. ORDER OF DISSOLUTION. The commission or the executive director may enter an order dissolving the district ~~[at the conclusion of the hearing]~~ if the commission or executive director ~~[it]~~ finds that the district has performed none of the functions for which it was created for a period of five consecutive years ~~[before the day of the proceeding]~~ and that the district has no outstanding bonded indebtedness.

SECTION 9. Section 49.326(a), Water Code, is amended to read as follows:

(a) Appeals from an ~~[a commission]~~ order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

SECTION 10. Section 54.030(b), Water Code, is amended to read as follows:

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution

1 declaring that in its judgment, conversion into a municipal utility  
2 district operating under this chapter and under Article XVI,  
3 Section 59, of the Texas Constitution, would serve the best  
4 interest of the district and would be a benefit to the land and  
5 property included in the district. The resolution shall also  
6 request that the commission approve ~~[to hold a hearing on the~~  
7 ~~question of]~~ the conversion of the district.

8 SECTION 11. Section 54.032, Water Code, is amended to read  
9 as follows:

10 Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice  
11 of the conversion ~~[hearing]~~ shall be given by publishing notice in a  
12 newspaper with general circulation in the county or counties in  
13 which the district is located.

14 (b) The notice shall be published once a week for two  
15 consecutive weeks ~~[with the first publication to be made not less~~  
16 ~~than 14 full days before the time set for the hearing]~~.

17 (c) The notice shall:

18 (1) ~~[state the time and place of the hearing,~~  
19 ~~(2)]~~ set out the resolution adopted by the district  
20 in full; and

21 (2) ~~(3)]~~ notify all interested persons how they may  
22 offer comments ~~[to appear and offer testimony]~~ for or against the  
23 proposal contained in the resolution.

24 SECTION 12. Section 54.033, Water Code, is amended to read  
25 as follows:

26 Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) If  
27 ~~[After a hearing, if]~~ the commission or the executive director

1 finds that conversion of the district into one operating under this  
2 chapter would serve the best interest of the district and would be a  
3 benefit to the land and property included in the district, the  
4 commission or executive director ~~[it]~~ shall enter an order making  
5 this finding and the district shall become a district operating  
6 under this chapter and no confirmation election shall be required.

7 (b) If the commission or the executive director finds that  
8 the conversion of the district would not serve the best interest of  
9 the district and would not be a benefit to the land and property  
10 included in the district, the commission or executive director ~~[it]~~  
11 shall enter an order against conversion of the district into one  
12 operating under this chapter.

13 (c) The findings of the commission or the executive director  
14 entered under this section shall be subject to appeal or review  
15 within 30 days after entry of the order ~~[of the commission]~~ granting  
16 or denying the conversion.

17 (d) A copy of the ~~[commission]~~ order converting a district  
18 shall be filed in the deed records of the county or counties in  
19 which the district is located.

20 SECTION 13. Sections 49.322 and 54.031, Water Code, are  
21 repealed.

22 SECTION 14. The changes in law made by Section 13.187, Water  
23 Code, as amended by this Act, apply only to a rate application or  
24 appeal filed with the Texas Commission on Environmental Quality on  
25 or after the effective date of this Act. A rate application or  
26 appeal filed with the commission before the effective date of this  
27 Act is governed by the law as it existed immediately before the



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1 effective date of this Act, and that law is continued in effect for  
2 that purpose.

3 SECTION 15. This Act takes effect September 1, 2009.