

By: King of Zavala

H.B. No. 3550

A BILL TO BE ENTITLED

AN ACT

relating to penalty payment plans, Concho River Watermaster Program, utility and district applications at the TCEQ, and the recovery of costs associated with the Clean Rivers program

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

SECTION 1. Sections 5.1175, Water Code, is amended as follows:

(a) The commission by rule shall allow ~~[a small business that]~~ an entity who 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 an entity ~~[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 ~~[12]~~ 36 months.

SECTION 2. Section 11.559, Water Code, is repealed.

SECTION 3. Section 13.043(h), Water Code, is amended as follows:

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

SECTION 4. Sections 13.187(f), (i), (j), (k), (l), (n), and (o) Water Code, are amended as follows:

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

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

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

1 proceeding.

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

9 (1) 90 days by a local regulatory authority; or

10 (2) [~~150~~] 250 days by the commission or executive  
11 director.

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

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

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

SECTION 5. Section 13.242(c), Water Code, is amended as follows:

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

SECTION 6. Section 13.248, Water Code, is amended as follows:

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

SECTION 7. Section 26.0135(h), Water Code, is amended as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section ~~[from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the~~

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

1 ~~shall file a written report accounting for the costs recovered~~  
2 ~~under this section with the governor, the lieutenant governor, and~~  
3 ~~the speaker of the house of representatives on or before December 1~~  
4 ~~of each even-numbered year.]~~

5 SECTION 8. Section 49.321, Water Code, is amended as  
6 follows:

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

11 SECTION 9. Section 49.322, Water Code, is repealed.

12 SECTION 10. Section 49.324, Water Code, is amended as  
13 follows:

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

20 SECTION 11. Section 54.030(b), Water Code, is amended as  
21 follows:

22 (b) The governing body of a district which desires to  
23 convert into a district operating under this chapter shall adopt  
24 and enter in the minutes of the governing body a resolution  
25 declaring that in its judgment, conversion into a municipal utility  
26 district operating under this chapter and under Article XVI,  
27 Section 59, of the Texas Constitution, would serve the best

1 interest of the district and would be a benefit to the land and  
2 property included in the district. The resolution shall also  
3 request that the commission approve ~~[to hold a hearing on the~~  
4 ~~question of]~~ the conversion of the district.

5 SECTION 12. Section 54.031, Water Code, is repealed.

6 SECTION 13. Section 54.032, Water Code, is amended as  
7 follows:

8 (a) Notice of the conversion ~~[hearing]~~ shall be given by  
9 publishing notice in a newspaper with general circulation in the  
10 county or counties in which the district is located.

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

14 (c) The notice shall:

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

18 (2) ~~[(3)]~~ notify all interested persons ~~[to appear and~~  
19 ~~offer testimony]~~ how they may offer comments for or against the  
20 proposal contained in the resolution.

21 SECTION 14. Sections 54.033(a), (b), (c), and (d), Water  
22 Code, are amended as follows:

23 (a) ~~[After a hearing,]~~ [i]f the commission or the executive  
24 director finds that conversion of the district into one operating  
25 under this chapter would serve the best interest of the district and  
26 would be a benefit to the land and property included in the  
27 district, it shall enter an order making this finding and the

1 district shall become a district operating under this chapter and  
2 no confirmation election shall be required.

3 (b) If the commission or the executive director finds that  
4 the conversion of the district would not serve the best interest of  
5 the district and would not be a benefit to the land and property  
6 included in the district, it shall enter an order against  
7 conversion of the district into one operating under this chapter.

8 (c) The findings of the commission or the executive director  
9 entered under this section shall be subject to appeal or review  
10 within 30 days after entry of the order of the commission granting  
11 or denying the conversion.

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

15 SECTION 15. The changes in law made by Section 4 of this Act  
16 apply only to rate applications and appeals filed with the Texas  
17 Commission on Environmental Quality on or after the effective date  
18 of this bill.

19 SECTION 16. This Act takes effect September 1, 2009.