

1-1 By: King of Zavala (Senate Sponsor - Hegar) H.B. No. 3550  
1-2 (In the Senate - Received from the House May 18, 2009;  
1-3 May 19, 2009, read first time and referred to Committee on Natural  
1-4 Resources; May 25, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 May 25, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3550 By: Hegar

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the powers and duties of the Texas Commission on  
1-11 Environmental Quality and related entities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 5.1175, Water Code, is amended to read as  
1-14 follows:

1-15 Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) The  
1-16 commission by rule may ~~[shall]~~ allow a person who ~~[small business~~  
1-17 ~~that]~~ owes a monetary civil or administrative penalty imposed for a  
1-18 violation of law within the commission's jurisdiction or for a  
1-19 violation of a license, permit, or order issued or rule adopted by  
1-20 the commission to pay the penalty in periodic installments. The  
1-21 rule must provide a procedure for a person ~~[qualified small~~  
1-22 ~~business]~~ to apply for permission to pay the penalty over time.

1-23 (b) ~~[The rule must classify small businesses by their net~~  
1-24 ~~annual receipts and number of employees. A business that is a~~  
1-25 ~~wholly owned subsidiary of a corporation may not qualify as a small~~  
1-26 ~~business under this section.~~

1-27 ~~[(c)]~~ The rule may vary the period over which the penalty  
1-28 may be paid or the amount of the periodic installments according to  
1-29 the amount of the penalty owed and the size of the business that  
1-30 owes the penalty. The period over which the penalty may be paid may  
1-31 not exceed 36 ~~[12]~~ months.

1-32 SECTION 2. Section 7.002, Water Code, is amended to read as  
1-33 follows:

1-34 Sec. 7.002. ENFORCEMENT AUTHORITY. The commission may  
1-35 initiate an action under this chapter to enforce provisions of this  
1-36 code and the Health and Safety Code within the commission's  
1-37 jurisdiction as provided by Section 5.013 of this code and rules  
1-38 adopted under those provisions. The commission or the executive  
1-39 director may institute legal proceedings to compel compliance with  
1-40 the relevant provisions of this code and the Health and Safety Code  
1-41 and rules, orders, permits, or other decisions of the commission.  
1-42 The commission may delegate to the executive director the authority  
1-43 to issue an administrative order, including an administrative order  
1-44 that assesses penalties or orders corrective measures, to ensure  
1-45 compliance with the provisions of this code and the Health and  
1-46 Safety Code within the commission's jurisdiction as provided by  
1-47 Section 5.013 of this code and rules adopted under those  
1-48 provisions.

1-49 SECTION 3. Sections 11.0842(a) and (b), Water Code, are  
1-50 amended to read as follows:

1-51 (a) If a person violates this chapter, a rule or order  
1-52 adopted under this chapter, Section 12.052, or Section 16.236, or a  
1-53 permit, certified filing, or certificate of adjudication issued  
1-54 under this chapter, the commission may assess an administrative  
1-55 penalty against that person as provided by this section. The  
1-56 commission may assess an administrative penalty for a violation  
1-57 relating to a water division or a river basin or segment of a river  
1-58 basin regardless of whether a watermaster has been appointed for  
1-59 the water division or river basin or segment of the river basin.

1-60 (b) The penalty may be in an amount not to exceed \$5,000 for  
1-61 each day the person is in violation of this chapter, a ~~[the]~~ rule or  
1-62 order adopted under this chapter, or a ~~[the]~~ permit, certified  
1-63 filing, or certificate of adjudication issued under this chapter.

The penalty may be in an amount not to exceed \$10,000 for each day the person is in violation of a rule or order adopted under Section 12.052. The penalty may be in an amount not to exceed \$1,000 for each day the person is in violation of a ~~[the]~~ rule or order adopted under Section 16.236 ~~[of this code]~~. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

SECTION 4. Section 12.052, Water Code, is amended by amending Subsections (a), (c), and (e) and adding Subsections (g) and (h) to read as follows:

(a) The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, operation, repair, and removal of dams located in this state. In determining the frequency that dams located in this state are inspected, the commission shall give preference to inspecting dams that are classified as posing a high or significant hazard as defined by commission rule.

(c) If the owner of a dam that is required to be constructed, reconstructed, maintained, operated, repaired, or removed in order to comply with the rules and orders promulgated under ~~[Subsection (a) of]~~ this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's final, nonappealable order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, the person ~~[he]~~ is liable for ~~[to]~~ a penalty of not more than \$10,000 ~~[\$5,000]~~ a day for each day the person ~~[he]~~ continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

(e) If the commission issues an emergency order under authority of this section without notice to the dam owner, the commission shall fix a time and place for a hearing which shall be held as soon as practicable to affirm, modify, or set aside the emergency order. The notice does not have to comply with Chapter 2001, Government Code. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted as appropriate under Chapter 2001, Government Code ~~[the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes)]~~.

(g) The commission may assess an administrative penalty as provided by Section 11.0842 against a person who violates a rule or order adopted under this section.

(h) This section does not affect the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

SECTION 5. Section 13.043(h), Water Code, is amended to read 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).

SECTION 6. Sections 13.187(f), (i), (j), (k), (l), (n), and (o), Water Code, are amended to read 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 proceeding.

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

- (1) 90 days by a local regulatory authority; or
- (2) 250 ~~[150]~~ days by the commission or executive director.

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

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

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

SECTION 7. Section 13.242(c), Water Code, is amended to read 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 8. Section 13.248, Water Code, is amended to read 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 9. Section 26.0135(h), Water Code, is amended to read 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 watershed]~~. Irrigation water rights, non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and

wastewater dischargers do not pay excessive amounts, ~~[that program funds are equitably apportioned among basins,]~~ that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177. ~~[The rules concerning the apportionment and assessment of reasonable costs shall provide for a recovery of not more than \$5,000,000 annually. Costs recovered by the commission are to be deposited to the credit of the water resource management account and may be used only to accomplish the purposes of this section. The commission may apply not more than 10 percent of the costs recovered annually toward the commission's overhead costs for the administration of this section and the implementation of regional water quality assessments. The commission, with the assistance and input of each river authority, shall file a written report accounting for the costs recovered 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 10. Sections 37.006(f) and (g), Water Code, are amended to read as follows:

(f) A person whose license or registration has been expired for 60 ~~[30]~~ days or less may apply for renewal of the license or registration by paying to the commission a renewal fee in an amount prescribed by commission rule not to exceed 1-1/2 times the normally required renewal fee.

(g) A person whose license or registration has been expired for more than 60 ~~[30]~~ days may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license or registration.

SECTION 11. 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 12. 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 13. 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 14. 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 declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution shall also request that the commission approve ~~[to hold a hearing on the question of]~~ the conversion of the district.

SECTION 15. Section 54.032, Water Code, is amended to read as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice of the conversion ~~[hearing]~~ shall be given by publishing notice in a

newspaper with general circulation in the county or counties in which the district is located.

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

(c) The notice shall:

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

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

SECTION 16. Section 54.033, Water Code, is amended to read as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) If ~~[After a hearing, if]~~ the commission or the executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, the commission or executive director ~~[it]~~ shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

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

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

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

SECTION 17. Sections 49.322 and 54.031, Water Code, are repealed.

SECTION 18. (a) The changes in law made by this Act to Sections 11.0842 and 12.052, Water Code, apply only to a violation that occurs on or after the effective date of this Act. For purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

(b) A violation that occurs before the effective date of this Act is governed by the law in effect on the date of the violation, and the former law is continued in effect for that purpose.

SECTION 19. The changes in law made by Section 13.187, Water Code, as amended by this Act, apply only to a rate application or appeal filed with the Texas Commission on Environmental Quality on or after the effective date of this Act. A rate application or appeal filed with the commission before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20. The change in law made by this Act to Sections 37.006(f) and (g), Water Code, applies to the renewal of a license or registration that expires on or after the effective date of this Act. A license or registration that expires before the effective date of this Act is governed by the law in effect on the date the license or registration was issued, and the former law is continued in effect for that purpose.

SECTION 21. This Act takes effect September 1, 2009.

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