

By: Hegar

S.B. No. 1846

Substitute the following for S.B. No. 1846:

By: Corte

C.S.S.B. No. 1846

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. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.0365 to read as follows:

Sec. 341.0365. ADDITIONAL REQUIREMENTS FOR OWNERS AND OPERATORS OF CERTAIN WATER WELLS. (a) In addition to any applicable requirements under this chapter or other law, a person who owns or operates a water well that, for compensation, provides water to not fewer than 3 and not more than 14 residences for any purpose shall ensure that the well water is treated with chlorine or a chlorine compound.

(b) The chlorination system for the well water must be designed by a professional water engineer. The owner or operator of the well must submit the plans to the commission for approval before use of the chlorination system. The owner or operator of the well shall maintain the chlorination system and keep the system in functional operating condition.

(c) In coordination with the local health department, the owner or operator of the well must perform testing for foreign organisms in the water, including fecal coliform bacteria and E. coli bacteria, every six months. The owner or operator of the well must provide the commission and the recipients of water from the

1 well with the results of the testing.

2 SECTION 2. Section 5.1175, Water Code, is amended to read as
3 follows:

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

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

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

21 SECTION 3. Section 7.002, Water Code, is amended to read as
22 follows:

23 Sec. 7.002. ENFORCEMENT AUTHORITY. The commission may
24 initiate an action under this chapter to enforce provisions of this
25 code and the Health and Safety Code within the commission's
26 jurisdiction as provided by Section 5.013 of this code and rules
27 adopted under those provisions. The commission or the executive

1 director may institute legal proceedings to compel compliance with
2 the relevant provisions of this code and the Health and Safety Code
3 and rules, orders, permits, or other decisions of the commission.
4 The commission may delegate to the executive director the authority
5 to issue an administrative order including the authority to assess
6 penalties or order corrective measures to ensure compliance with
7 the provisions of this code and the Health and Safety Code within
8 the commission's jurisdiction as provided by Section 5.013 of this
9 code and rules adopted under those provisions.

10 SECTION 4. Section 13.043, Water Code, is amended by
11 amending Subsection (h) and adding Subsection (h-1) to read as
12 follows:

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

17 (h-1) If the commission sets a final rate that is lower than
18 the interim rate established under Subsection (h), the retail
19 public utility shall refund or credit the difference between the
20 interim rate and the final rate plus interest as determined by the
21 commission, unless otherwise agreed to by the parties to the
22 proceeding. If the commission sets a final rate that is higher than
23 the interim rate, the retail public utility may collect the
24 difference between the interim rate and the final rate unless
25 otherwise agreed to by the parties to the proceeding.

26 SECTION 5. Subsection (c), Section 13.131, Water Code, is
27 amended to read as follows:

1 (c) The commission shall fix proper and adequate rates and
2 methods of depreciation, amortization, or depletion of the several
3 classes of property of each utility and shall require every utility
4 to carry a proper and adequate depreciation account in accordance
5 with those rates and methods and with any other rules the commission
6 prescribes. Rules adopted under this subsection must require the
7 book cost less net salvage of depreciable utility plant retired to
8 be charged in its entirety to the accumulated depreciation account
9 in a manner consistent with accounting treatment of regulated
10 electric and gas utilities in this state. Those rates, methods, and
11 accounts shall be utilized uniformly and consistently throughout
12 the rate-setting and appeal proceedings.

13 SECTION 6. Subsection (a), Section 13.145, Water Code, is
14 amended to read as follows:

15 (a) A utility may consolidate more than one system under a
16 single tariff on a regional or statewide basis [~~only~~] if[+]

17 [~~(1) the systems under the tariff are substantially~~
18 ~~similar in terms of facilities, quality of service, and cost of~~
19 ~~service; and~~

20 [~~(2)~~] the tariff provides for rates that promote water
21 conservation for single-family residences and landscape
22 irrigation.

23 SECTION 7. Section 13.187, Water Code, is amended by
24 amending Subsections (f), (i), (j), (k), (l), (n), and (o) and
25 adding Subsection (l-1) to read as follows:

26 (f) The regulatory authority may set the matter for hearing
27 on its own motion at any time within 120 days after the effective

1 date of the rate change. [~~If more than half of the ratepayers of the~~
2 ~~utility receive service in a county with a population of more than~~
3 ~~2.5 million, the hearing must be held at a location in that county.~~]

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

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

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

24 (1) 90 days by a local regulatory authority; or

25 (2) 250 [~~150~~] days by the commission or executive
26 director.

27 (1) During [~~At any time during~~] the pendency of the rate

1 proceeding the regulatory authority or the executive director may
2 fix interim rates to remain in effect until a final determination is
3 made on the proposed rate. The regulatory authority may fix interim
4 rates at any time during the pendency of the rate proceeding. The
5 executive director may fix interim rates not later than the 120th
6 day after the proposed effective date of the proposed rate change.
7 The interim rates established by the executive director may not be
8 lower than the rates on the utility's approved tariff or higher than
9 those in the application of the utility. In establishing an interim
10 rate, the executive director shall consider only representative
11 operating data for the test year proposed in the application of the
12 utility. The executive director may request additional data or
13 information for the test year. In establishing an interim rate, the
14 executive director shall consider:

15 (1) whether the interim rate will preserve the
16 financial integrity of the utility during the period that the
17 interim rate is in effect;

18 (2) whether the interim rate will provide sufficient
19 money for the capital improvements necessary to provide facilities
20 capable of providing adequate and continuous utility service during
21 the period that the interim rate is in effect;

22 (3) whether the interim rate equitably distributes
23 costs across and is consistent in application to each class of
24 affected customers; and

25 (4) any other factor that the executive director
26 considers adequately balances the public interest and that of the
27 utility.

1 (1-1) If the executive director establishes an interim rate
2 under Subsection (1), the executive director shall issue an order
3 establishing the interim rate that states the basis on which the
4 executive director established the interim rate, after taking into
5 consideration the factors provided by this section.

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

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

18 SECTION 8. Subchapter F, Chapter 13, Water Code, is amended
19 by adding Section 13.193 to read as follows:

20 Sec. 13.193. UTILITY FACILITIES CONSTRUCTION AND
21 IMPROVEMENT CHARGE. (a) Notwithstanding any other provision of
22 this chapter, a utility may assess a utility facilities
23 construction and improvement charge to recover the depreciation and
24 return on investment of a utility facilities construction and
25 improvement project that:

26 (1) is completed and placed into service between two
27 consecutive statements of intent to change the utility's rates or

1 tariff filed under Section 13.187; and

2 (2) serves the utility's certificated service area,
3 including a facility used for:

4 (A) the production, transmission, storage,
5 distribution, or provision of potable or recycled water to the
6 public; or

7 (B) the collection, transportation, treatment,
8 or disposal of sewage.

9 (b) The commission by rule shall require a utility that
10 proposes to assess a utility facilities construction and
11 improvement charge under this section:

12 (1) to file a tariff establishing a just and
13 reasonable manner for calculating the charge; and

14 (2) to receive the executive director's approval of
15 the tariff.

16 (c) In adopting rules under Subsection (b), the commission
17 shall ensure that:

18 (1) not later than the 60th day before a utility's
19 proposed inclusion of a charge or a proposed increase of a charge in
20 a tariff under this section, the utility submits to the executive
21 director for review of a project's eligibility a written notice
22 that contains:

23 (A) the amount of the proposed charge or increase
24 of a charge;

25 (B) the proposed implementation date for the
26 charge or increase of a charge;

27 (C) a list of completed, eligible capital

1 projects, and related depreciation and return on investment for
2 which the utility seeks reimbursement through the charge or
3 increase of a charge; and

4 (D) a calculation of the projected total annual
5 increase in revenue due to the charge or increase of a charge;

6 (2) the total amount the utility is authorized to
7 recover annually through a charge assessed under this section and
8 the amount the utility actually recovers are subject to annual
9 audit by the executive director;

10 (3) the amount of the charge the utility requests
11 authorization to assess is based on the amount necessary to ensure
12 that the charge yields a rate of return on invested capital that is
13 equal to:

14 (A) the rate of return approved for the utility
15 in the utility's most recent approved base rate or tariff change
16 application filed under Section 13.187; or

17 (B) the rate of return proposed by the utility,
18 if the rates in the utility's most recent base rate or tariff change
19 application were approved by settlement;

20 (4) the cumulative annual amount the utility proposes
21 to recover from the charge does not exceed an amount equal to 10
22 percent of the utility's annual revenue;

23 (5) the utility does not implement an increase under
24 this section more often than twice every calendar year;

25 (6) the charge is applied to each customer included in
26 the tariff;

27 (7) the utility provides to each customer written

1 notice of the charge on the initial tariff filing that proposes to
2 implement the charge; and

3 (8) the charge is subject to a true-up or
4 reconciliation at the utility's next rate case filed under Section
5 13.187.

6 (d) Notwithstanding any other provision of this code, the
7 implementation of a utility facilities construction and
8 improvement charge or an increase in a utility facilities
9 construction and improvement charge is not subject to a contested
10 case hearing under Chapter 2001, Government Code.

11 (e) This section does not apply to a utility that has in
12 place a negotiated stay-out agreement on September 1, 2009.

13 SECTION 9. Subsection (c), Section 13.242, Water Code, is
14 amended to read as follows:

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

23 SECTION 10. Section 13.248, Water Code, is amended to read
24 as follows:

25 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts
26 between retail public utilities designating areas to be served and
27 customers to be served by those retail public utilities, when

1 approved by the commission or the executive director after public
2 notice [~~and hearing~~], are valid and enforceable and are
3 incorporated into the appropriate areas of public convenience and
4 necessity.

5 SECTION 11. Subsection (h), Section 26.0135, Water Code, is
6 amended to read as follows:

7 (h) The commission shall apportion, assess, and recover the
8 reasonable costs of administering the water quality management
9 programs under this section [~~from users of water and wastewater~~
10 ~~permit holders in the watershed according to the records of the~~
11 ~~commission generally in proportion to their right, through permit~~
12 ~~or contract, to use water from and discharge wastewater in the~~
13 ~~watershed~~]. Irrigation water rights, non-priority hydroelectric
14 rights of a water right holder that owns or operates privately owned
15 facilities that collectively have a capacity of less than two
16 megawatts, and water rights held in the Texas Water Trust for terms
17 of at least 20 years will not be subject to this assessment. The
18 cost to river authorities and others to conduct water quality
19 monitoring and assessment shall be subject to prior review and
20 approval by the commission as to methods of allocation and total
21 amount to be recovered. The commission shall adopt rules to
22 supervise and implement the water quality monitoring, assessment,
23 and associated costs. The rules shall ensure that water users and
24 wastewater dischargers do not pay excessive amounts, [~~that program~~
25 ~~funds are equitably apportioned among basins,~~] that a river
26 authority may recover no more than the actual costs of
27 administering the water quality management programs called for in

1 this section, and that no municipality shall be assessed cost for
2 any efforts that duplicate water quality management activities
3 described in Section 26.177. ~~[The rules concerning the~~
4 ~~apportionment and assessment of reasonable costs shall provide for~~
5 ~~a recovery of not more than \$5,000,000 annually. Costs recovered by~~
6 ~~the commission are to be deposited to the credit of the water~~
7 ~~resource management account and may be used only to accomplish the~~
8 ~~purposes of this section. The commission may apply not more than 10~~
9 ~~percent of the costs recovered annually toward the commission's~~
10 ~~overhead costs for the administration of this section and the~~
11 ~~implementation of regional water quality assessments. The~~
12 ~~commission, with the assistance and input of each river authority,~~
13 ~~shall file a written report accounting for the costs recovered~~
14 ~~under this section with the governor, the lieutenant governor, and~~
15 ~~the speaker of the house of representatives on or before December 1~~
16 ~~of each even-numbered year.]~~

17 SECTION 12. Section 49.321, Water Code, is amended to read
18 as follows:

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

23 SECTION 13. Section 49.324, Water Code, is amended to read
24 as follows:

25 Sec. 49.324. ORDER OF DISSOLUTION. The commission or the
26 executive director may enter an order dissolving the district ~~[at~~
27 ~~the conclusion of the hearing]~~ if the commission or executive

1 director [~~it~~] finds that the district has performed none of the
2 functions for which it was created for a period of five consecutive
3 years [~~before the day of the proceeding~~] and that the district has
4 no outstanding bonded indebtedness.

5 SECTION 14. Subsection (a), Section 49.326, Water Code, is
6 amended to read as follows:

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

10 SECTION 15. Subsection (b), Section 54.030, Water Code, is
11 amended to read as follows:

12 (b) The governing body of a district which desires to
13 convert into a district operating under this chapter shall adopt
14 and enter in the minutes of the governing body a resolution
15 declaring that in its judgment, conversion into a municipal utility
16 district operating under this chapter and under Article XVI,
17 Section 59, of the Texas Constitution, would serve the best
18 interest of the district and would be a benefit to the land and
19 property included in the district. The resolution shall also
20 request that the commission approve [~~to hold a hearing on the~~
21 ~~question of~~] the conversion of the district.

22 SECTION 16. Section 54.032, Water Code, is amended to read
23 as follows:

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

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

4 (c) The notice shall:

5 (1) [~~state the time and place of the hearing,~~
6 [~~2~~] set out the resolution adopted by the district
7 in full; and

8 (2) [~~3~~] notify all interested persons how they may
9 offer comments [~~to appear and offer testimony~~] for or against the
10 proposal contained in the resolution.

11 SECTION 17. Section 54.033, Water Code, is amended to read
12 as follows:

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

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

27 (c) The findings of the commission or the executive director

1 entered under this section shall be subject to appeal or review
2 within 30 days after entry of the order [~~of the commission~~] granting
3 or denying the conversion.

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

7 SECTION 18. Sections 49.322 and 54.031, Water Code, are
8 repealed.

9 SECTION 19. Section 13.145(a), Water Code, as amended by
10 this Act, applies only to an application for approval of a tariff
11 filed on or after the effective date of this Act. An application
12 filed before the effective date of this Act is governed by the law
13 in effect on the date the application is filed, and that law is
14 continued in effect for that purpose.

15 SECTION 20. The changes in law made by Section 13.187, Water
16 Code, as amended by this Act, apply only to a rate application or
17 appeal filed with the Texas Commission on Environmental Quality on
18 or after the effective date of this Act. A rate application or
19 appeal filed with the commission before the effective date of this
20 Act is governed by the law as it existed immediately before the
21 effective date of this Act, and that law is continued in effect for
22 that purpose.

23 SECTION 21. The changes in law made by Section 13.193, Water
24 Code, as added by this Act, apply only to a project that is
25 completed and placed into service on or after the effective date of
26 this Act. A project that is completed and placed into service before
27 the effective date of this Act is subject to the law in effect at

1 that time, and that law is continued in effect for that purpose.

2 SECTION 22. (a) Except as provided by Subsection (b) of
3 this section, this Act takes effect September 1, 2009.

4 (b) Section 341.0365, Health and Safety Code, as added by
5 this Act, takes effect September 1, 2010.