

1-1 By: Hegar S.B. No. 1846  
1-2 (In the Senate - Filed March 11, 2009; March 20, 2009, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 14, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 10, Nays 0; April 14, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1846 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. Subsection (h), Section 13.043, Water Code, is  
1-33 amended to read as follows:

1-34 (h) The commission or executive director may ~~[, on a motion~~  
1-35 ~~by the executive director or by the appellant under Subsection (a),~~  
1-36 ~~(b), or (f) of this section,]~~ establish interim rates to be in  
1-37 effect until a final decision is made in an appeal filed under  
1-38 Subsection (a), (b), or (f).

1-39 SECTION 3. Subsections (f), (i), (j), (k), (l), (n), and  
1-40 (o), Section 13.187, Water Code, are amended to read as follows:

1-41 (f) The regulatory authority may set the matter for hearing  
1-42 on its own motion at any time within 120 days after the effective  
1-43 date of the rate change. ~~[If more than half of the ratepayers of the~~  
1-44 ~~utility receive service in a county with a population of more than~~  
1-45 ~~2.5 million, the hearing must be held at a location in that county.]~~

1-46 (i) The regulatory authority or the executive director,  
1-47 pending final action in a rate proceeding, may order the utility to  
1-48 deposit all or part of the rate increase received or to be received  
1-49 into an escrow account with a financial institution approved by the  
1-50 regulatory authority. Unless otherwise agreed to by the parties to  
1-51 the rate proceeding, the utility shall refund or credit against  
1-52 future bills all sums collected during the pendency of the rate  
1-53 proceeding in excess of the rate finally ordered plus interest as  
1-54 determined by the regulatory authority.

1-55 (j) For good cause shown, the regulatory authority or the  
1-56 executive director may authorize the release of funds to the  
1-57 utility from the escrow account during the pendency of the  
1-58 proceeding.

1-59 (k) If the regulatory authority receives at least the number  
1-60 of complaints from ratepayers required for the regulatory authority  
1-61 to set a hearing under Subsection (e), the regulatory authority or  
1-62 the executive director may, pending the hearing and a decision,  
1-63 suspend the date the rate change would otherwise be effective.

2-1 Except as provided by Subsection (d-1), the proposed rate may not be  
 2-2 suspended for longer than:

- 2-3 (1) 90 days by a local regulatory authority; or  
 2-4 (2) 250 [~~150~~] days by the commission or executive  
 2-5 director.

2-6 (l) At any time during the pendency of the rate proceeding  
 2-7 the regulatory authority or the executive director may fix interim  
 2-8 rates to remain in effect until a final determination is made on the  
 2-9 proposed rate.

2-10 (n) For good cause shown, the regulatory authority or the  
 2-11 executive director may at any time during the proceeding require  
 2-12 the utility to refund money collected under a proposed rate before  
 2-13 the rate was suspended or an interim rate was established to the  
 2-14 extent the proposed rate exceeds the existing rate or the interim  
 2-15 rate.

2-16 (o) If a regulatory authority other than the commission or  
 2-17 the executive director establishes interim rates or an escrow  
 2-18 account, the regulatory authority must make a final determination  
 2-19 on the rates not later than the first anniversary of the effective  
 2-20 date of the interim rates or escrowed rates or the rates are  
 2-21 automatically approved as requested by the utility.

2-22 SECTION 4. Subsection (c), Section 13.242, Water Code, is  
 2-23 amended to read as follows:

2-24 (c) The commission may by rule allow a municipality or  
 2-25 utility or water supply corporation to render retail water or sewer  
 2-26 service without a certificate of public convenience and necessity  
 2-27 if the municipality has given notice under Section 13.255 [~~of this~~  
 2-28 ~~code~~] that it intends to provide retail water or sewer service to an  
 2-29 area or if the utility or water supply corporation has less than 15  
 2-30 potential connections and is not within the certificated area of  
 2-31 another retail public utility.

2-32 SECTION 5. Section 13.248, Water Code, is amended to read as  
 2-33 follows:

2-34 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts  
 2-35 between retail public utilities designating areas to be served and  
 2-36 customers to be served by those retail public utilities, when  
 2-37 approved by the commission or the executive director after public  
 2-38 notice [~~and hearing~~], are valid and enforceable and are  
 2-39 incorporated into the appropriate areas of public convenience and  
 2-40 necessity.

2-41 SECTION 6. Subsection (h), Section 26.0135, Water Code, is  
 2-42 amended to read as follows:

2-43 (h) The commission shall apportion, assess, and recover the  
 2-44 reasonable costs of administering the water quality management  
 2-45 programs under this section [~~from users of water and wastewater~~  
 2-46 ~~permit holders in the watershed according to the records of the~~  
 2-47 ~~commission generally in proportion to their right, through permit~~  
 2-48 ~~or contract, to use water from and discharge wastewater in the~~  
 2-49 ~~watershed]. Irrigation water rights, non-priority hydroelectric~~  
 2-50 rights of a water right holder that owns or operates privately owned  
 2-51 facilities that collectively have a capacity of less than two  
 2-52 megawatts, and water rights held in the Texas Water Trust for terms  
 2-53 of at least 20 years will not be subject to this assessment. The  
 2-54 cost to river authorities and others to conduct water quality  
 2-55 monitoring and assessment shall be subject to prior review and  
 2-56 approval by the commission as to methods of allocation and total  
 2-57 amount to be recovered. The commission shall adopt rules to  
 2-58 supervise and implement the water quality monitoring, assessment,  
 2-59 and associated costs. The rules shall ensure that water users and  
 2-60 wastewater dischargers do not pay excessive amounts, [~~that program~~  
 2-61 ~~funds are equitably apportioned among basins,] that a river~~  
 2-62 authority may recover no more than the actual costs of  
 2-63 administering the water quality management programs called for in  
 2-64 this section, and that no municipality shall be assessed cost for  
 2-65 any efforts that duplicate water quality management activities  
 2-66 described in Section 26.177. [~~The rules concerning the~~  
 2-67 ~~apportionment and assessment of reasonable costs shall provide for~~  
 2-68 ~~a recovery of not more than \$5,000,000 annually. Costs recovered by~~  
 2-69 ~~the commission are to be deposited to the credit of the water~~

3-1 ~~resource management account and may be used only to accomplish the~~  
 3-2 ~~purposes of this section. The commission may apply not more than 10~~  
 3-3 ~~percent of the costs recovered annually toward the commission's~~  
 3-4 ~~overhead costs for the administration of this section and the~~  
 3-5 ~~implementation of regional water quality assessments. The~~  
 3-6 ~~commission, with the assistance and input of each river authority,~~  
 3-7 ~~shall file a written report accounting for the costs recovered~~  
 3-8 ~~under this section with the governor, the lieutenant governor, and~~  
 3-9 ~~the speaker of the house of representatives on or before December 1~~  
 3-10 ~~of each even-numbered year.]~~

3-11 SECTION 7. Section 49.321, Water Code, is amended to read as  
 3-12 follows:

3-13 Sec. 49.321. DISSOLUTION AUTHORITY. After notice [~~and~~  
 3-14 ~~hearing~~], the commission or executive director may dissolve any  
 3-15 district that is inactive for a period of five consecutive years and  
 3-16 has no outstanding bonded indebtedness.

3-17 SECTION 8. Section 49.324, Water Code, is amended to read as  
 3-18 follows:

3-19 Sec. 49.324. ORDER OF DISSOLUTION. The commission or the  
 3-20 executive director may enter an order dissolving the district [~~at~~  
 3-21 ~~the conclusion of the hearing~~] if the commission or executive  
 3-22 director [~~it~~] finds that the district has performed none of the  
 3-23 functions for which it was created for a period of five consecutive  
 3-24 years [~~before the day of the proceeding~~] and that the district has  
 3-25 no outstanding bonded indebtedness.

3-26 SECTION 9. Subsection (a), Section 49.326, Water Code, is  
 3-27 amended to read as follows:

3-28 (a) Appeals from an [~~a commission~~] order dissolving a  
 3-29 district shall be filed and heard in the district court of any of  
 3-30 the counties in which the land is located.

3-31 SECTION 10. Subsection (b), Section 54.030, Water Code, is  
 3-32 amended to read as follows:

3-33 (b) The governing body of a district which desires to  
 3-34 convert into a district operating under this chapter shall adopt  
 3-35 and enter in the minutes of the governing body a resolution  
 3-36 declaring that in its judgment, conversion into a municipal utility  
 3-37 district operating under this chapter and under Article XVI,  
 3-38 Section 59, of the Texas Constitution, would serve the best  
 3-39 interest of the district and would be a benefit to the land and  
 3-40 property included in the district. The resolution shall also  
 3-41 request that the commission approve [~~to hold a hearing on the~~  
 3-42 ~~question of~~] the conversion of the district.

3-43 SECTION 11. Section 54.032, Water Code, is amended to read  
 3-44 as follows:

3-45 Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice  
 3-46 of the conversion [~~hearing~~] shall be given by publishing notice in a  
 3-47 newspaper with general circulation in the county or counties in  
 3-48 which the district is located.

3-49 (b) The notice shall be published once a week for two  
 3-50 consecutive weeks [~~with the first publication to be made not less~~  
 3-51 ~~than 14 full days before the time set for the hearing~~].

3-52 (c) The notice shall:

3-53 (1) [~~state the time and place of the hearing,~~  
 3-54 [~~2~~]] set out the resolution adopted by the district  
 3-55 in full; and

3-56 (2) [~~3~~] notify all interested persons how they may  
 3-57 offer comments [~~to appear and offer testimony~~] for or against the  
 3-58 proposal contained in the resolution.

3-59 SECTION 12. Section 54.033, Water Code, is amended to read  
 3-60 as follows:

3-61 Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) If  
 3-62 [~~After a hearing, if~~] the commission or the executive director  
 3-63 finds that conversion of the district into one operating under this  
 3-64 chapter would serve the best interest of the district and would be a  
 3-65 benefit to the land and property included in the district, the  
 3-66 commission or executive director [~~it~~] shall enter an order making  
 3-67 this finding and the district shall become a district operating  
 3-68 under this chapter and no confirmation election shall be required.

3-69 (b) If the commission or the executive director finds that

4-1 the conversion of the district would not serve the best interest of  
4-2 the district and would not be a benefit to the land and property  
4-3 included in the district, the commission or executive director [~~it~~]  
4-4 shall enter an order against conversion of the district into one  
4-5 operating under this chapter.

4-6 (c) The findings of the commission or the executive director  
4-7 entered under this section shall be subject to appeal or review  
4-8 within 30 days after entry of the order [~~of the commission~~] granting  
4-9 or denying the conversion.

4-10 (d) A copy of the [~~commission~~] order converting a district  
4-11 shall be filed in the deed records of the county or counties in  
4-12 which the district is located.

4-13 SECTION 13. Sections 49.322 and 54.031, Water Code, are  
4-14 repealed.

4-15 SECTION 14. The changes in law made by Section 13.187, Water  
4-16 Code, as amended by this Act, apply only to a rate application or  
4-17 appeal filed with the Texas Commission on Environmental Quality on  
4-18 or after the effective date of this Act. A rate application or  
4-19 appeal filed with the commission before the effective date of this  
4-20 Act is governed by the law as it existed immediately before the  
4-21 effective date of this Act, and that law is continued in effect for  
4-22 that purpose.

4-23 SECTION 15. This Act takes effect September 1, 2009.

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