

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 13, 2009

TO: Honorable Allan Ritter, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2741 by Miller, Doug (Relating to allowing a water and sewer utility to assess a system construction and improvement surcharge to recover certain costs associated with certain construction and improvement projects.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Water Code to give an investor owned utility the ability to charge a construction and improvement surcharge to recover the depreciation and pre-tax return costs of a project related to a distribution system, collection system, or treatment works project that is completed and placed into service between two consecutive rate cases. The bill would require the Texas Commission on Environmental Quality (TCEQ) to adopt standards regarding the type of projects for which a utility may assess the surcharge.

The bill would require TCEQ to establish in rules the following requirements: documentation of surcharge requests includes a proposed capital budget; surcharge amounts subject to annual audits by TCEQ's Executive Director; total recoverable surcharge revenue that may not exceed 10 percent of the utility's total revenue; implementation of surcharge requests that may only occur once each calendar quarter; a surcharge that is applicable to customers of each system included on a combined tariff under Section 13.145, Water Code; and provision of customer notice of the surcharge or increases in the surcharge prior to implementing the surcharge. The bill requires that the rules be adopted by December 1, 2009.

Based on analysis by TCEQ, it is assumed that any costs associated with adopting standards and with rule-making could be absorbed within existing resources. However, the agency also states that the use of the term "surcharge" is in conflict with current law regarding the ability of a utility to earn depreciation and return on a surcharge. Section 13.183 (b), Water Code, states that surcharge funds are considered customer contributed capital and may not be included in invested capital and are not eligible for depreciation expense.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, SD, DB