

BILL ANALYSIS

Senate Research Center

H.B. 2694
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Natural Resources
4/30/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Commission on Environmental Quality (TCEQ) has regulatory oversight over air emissions, water use, wastewater discharges, and radioactive and solid waste disposal in Texas. The legislature created the umbrella structure for addressing environmental quality in 1993, consolidating regulatory programs of the Texas Natural Resource Conservation Commission (TNRCC). The legislature renamed TNRCC as TCEQ in 2001.

TCEQ is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. As a result of its review, the Sunset Advisory Commission found that Texas has a clear and ongoing need to regulate environmental quality, but TCEQ needs changes to be able to focus on and be effective in its core duties. This legislation continues TCEQ for 12 years and contains several additional statutory modifications. Among other provisions, the bill brings more predictability and authority to TCEQ's public assistance function; provides TCEQ additional tools to prevent and remediate groundwater contamination from leaking underground storage tanks and to effectively manage surface water; transfers the responsibility for making recommendations to protect groundwater for certain wells already under the jurisdiction of the Railroad Commission of Texas (railroad commission) from TCEQ to the railroad commission; and provides funding mechanisms to ensure TCEQ can meet its responsibilities.

In 1987, the legislature established the On-Site Wastewater Treatment Research Council (council) to award competitive research grants to improve the quality and affordability of on-site wastewater treatment systems and to educate the industry and public about on-site wastewater regulations and innovation. The council has a separate Sunset date of September 1, 2011. While the Sunset Advisory Commission found that the state continues to benefit from this research, it did not find a continuing need for an independent entity to administer the program. The Sunset Advisory Commission's recommendation to abolish the council and transfer its functions to TCEQ is also contained in this legislation.

H.B. 2694 amends current law relating to the continuation and functions of the Texas Commission on Environmental Quality and abolishing the On-site Wastewater Treatment Research Council.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Railroad Commission of Texas (railroad commission) in SECTION 2.01 (Section 91.011, Natural Resources Code) and SECTION 2.04 (Section 91.1015, Natural Resources Code).

Rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is transferred to the railroad commission in SECTION 2.06 (Section 27.046, Water Code) of this bill.

Rulemaking authority is expressly granted to TCEQ in SECTION 3.04 (Section 5.276, Water Code) of this bill.

Rulemaking authority previously granted to TCEQ is modified in SECTION 4.04 (Section 5.753, Water Code) and SECTION 4.05 (Section 5.754, Water Code) of this bill.

Rulemaking authority is expressly granted to TCEQ [Texas Natural Resource Conservation Commission] in SECTION 4.09 (Section 7.006, Water Code), SECTION 4.16 (Section 26.3467, Water Code), SECTION 4.17 (Section 26.351, Water Code), SECTION 4.19 (Section 26.3574, Water Code), and SECTION 5.03 (Section 11.053, Water Code) of this bill.

Rulemaking authority previously granted to TCEQ is rescinded in SECTION 10.03 (Section 5.228, Water Code) and SECTION 10.06 (Section 5.228, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. Amends the heading to Chapter 5, Water Code, to read as follows:

CHAPTER 5. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SECTION 1.02. Amends Section 5.014, Water Code, as follows:

Sec. 5.014. SUNSET PROVISION. Provides that the Texas Commission on Environmental Quality (TCEQ), rather than the Texas Natural Resource Conservation Commission (TNRCC), is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that, unless continued in existence as provided by that chapter, TCEQ is abolished and this chapter expires September 1, 2023, rather than September 1, 2011.

SECTION 1.03. Amends Subchapter C, Chapter 5, Water Code, by adding Section 5.061, as follows:

Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN CONTRIBUTIONS. Prohibits a member of TCEQ from accepting a contribution to a campaign for election to an elected office. Provides that if a member of TCEQ accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. Requires that the vacancy be filled in the manner provided by law.

SECTION 1.04. Amends Subchapter D, Chapter 5, Water Code, by adding Section 5.1031, as follows:

Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TCEQ to develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TCEQ rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TCEQ's jurisdiction.

(b) Requires that TCEQ's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires TCEQ to:

- (1) coordinate the implementation of the policy adopted under Subsection (a);
- (2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures.

SECTION 1.05. Amends Section 5.2291(b), Water Code, to require that the procurement of a contract for scientific and technical environmental services, except as provided by Section 5.2292, be conducted under the procedures for professional services selection provided in Subchapter A (Professional Services), Chapter 2254 (Professional and Consulting Services), Government Code.

SECTION 1.06. Amends Subchapter F, Chapter 5, Water Code, by adding Section 5.2292 to read as follows:

Sec. 5.2292. **CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE TANK STATE-LEAD PROGRAM.** (a) Authorizes the executive director of TCEQ (executive director) to directly award a contract for scientific and technical environmental services to a person if:

- (1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1) (relating to certain uses of petroleum storage tank remediation accounts);
- (2) the person has registered to perform corrective action under Section 26.364 (Registration of Persons Who Contract to Perform Corrective Action);
- (3) the person is eligible to receive a contract award from the state;
- (4) the person was performing related work at the site on or before July 1, 2011; and
- (5) the contract includes all contract provisions required for state contracts.

(b) Authorizes the executive director, notwithstanding Section 2254.004 (Contract for Professional Services of Architect, Engineer, Surveyor), Government Code, to directly award a contract for engineering services to a person if:

- (1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1);
- (2) the person is licensed under Chapter 1001 (Engineers), Occupations Code;
- (3) the person has registered to perform corrective action under Section 26.364;
- (4) the person is eligible to receive a contract award from the state;
- (5) the person was performing related work at the site on or before July 1, 2011; and

(6) the contract includes all contract provisions required for state contracts.

(c) Provides that nothing in Subsection (a) or (b) requires the executive director to make an award at a site or prevents the executive director from negotiating additional contract terms, including qualifications.

SECTION 1.07. Amends Section 12.052, Water Code, by amending Subsection (a) and adding Subsections (b-1) and (e-1), as follows:

(a) Requires TNRCC to make and enforce rules and orders and to perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state. Requires TNRCC, in performing TNRCC's duties under this subsection, to identify and focus on the most hazardous dams in the state.

(b-1) Authorizes TNRCC to enter into an agreement with an owner of a dam who is required to reevaluate the adequacy of an existing dam or spillway. Authorizes the agreement to include timelines to achieve compliance with TNRCC's design criteria and may authorize deferral of compliance with the criteria, as appropriate.

(e-1) Requires TNRCC to exempt dams that impound 1,000 acre-feet or less from meeting requirements related to dam safety.

ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

SECTION 2.01. Amends Section 91.011, Natural Resources Code, as follows:

Sec. 91.011. CASING. (a) Creates this subsection from existing text. Requires the owner or operator of a well being drilled for oil or gas, before drilling into the oil or gas bearing rock, to encase the well with good and sufficient wrought iron or steel casing or with any other material that meets standards adopted by the Railroad Commission of Texas (railroad commission), particularly where wells could be subjected to corrosive elements or high pressures and temperatures, in a manner and to a depth that will exclude surface or fresh water from the lower part of the well from penetrating the oil or gas bearing rock, and requires the well, if the well is drilled through the first into the lower oil or gas bearing rock, to be cased in a manner and to a depth that will exclude fresh water above the last oil or gas bearing rock penetrated.

(b) Requires the railroad commission to adopt rules regarding the depth of well casings necessary to meet the requirements of this section.

SECTION 2.02. Amends Subchapter B, Chapter 91, Natural Resources Code, by adding Section 91.0115, as follows:

Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) Requires the railroad commission to issue, on request from an applicant for a permit for a well to be drilled into oil or gas bearing rock, a letter of determination stating the total depth of surface casing required for the well by Section 91.011.

(b) Authorizes the railroad commission to charge a fee in an amount to be determined by the railroad commission for a letter of determination.

(c) Requires the railroad commission to charge a fee not to exceed \$75, in addition to the fee required by Subsection (b), for processing a request to expedite a letter of determination. Authorizes money collected under this subsection to be used to study and evaluate electronic access to geologic data and surface casing depths under Section 91.020.

SECTION 2.03. Amends Subchapter B, Chapter 91, Natural Resources Code, by adding Section 91.020, as follows:

Sec. 91.020. ELECTRONIC GEOLOGIC DATA. Requires the railroad commission to work cooperatively with other appropriate state agencies to study and evaluate electronic access to geologic data and surface casing depths necessary to protect usable groundwater in this state.

SECTION 2.04. Amends Subchapter D, Chapter 91, Natural Resources Code, by adding Section 91.1015, as follows:

Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. Requires the railroad commission to adopt rules to establish groundwater protection requirements for operations that are within the jurisdiction of the railroad commission, including requirements relating to the depth of surface casing for wells.

SECTION 2.05. Amends Section 27.033, Water Code, as follows:

Sec. 27.033. New heading: LETTER OF DETERMINATION. Requires a person making application to the railroad commission for a permit under this chapter to submit with the application a letter of determination from the railroad commission, rather than from the executive director, stating that drilling and using the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

SECTION 2.06. Amends Section 27.046, Water Code, as follows:

Sec. 27.046. New heading: LETTER OF DETERMINATION. (a) Prohibits the railroad commission from issuing a permit under rules adopted under this subchapter until the railroad commission issues to the applicant for the permit a letter of determination, rather than until the applicant for the permit provides to the railroad commission a letter from the executive director, stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

(b) Requires the railroad commission, rather than the executive director, to make the determination required by Subsection (a), to review:

- (1) the area of review and corrective action plans;
- (2) any subsurface monitoring plans required during injection or post injection;
- (3) any postinjection site care plans; and
- (4) any other elements of the application reasonably required in order for the railroad commission, rather than the executive director, to make the determination required by Subsection (a).

(c) Requires the railroad commission to adopt rules to implement and administer this section.

SECTION 2.07. Repealer: Section 5.701(r) (prohibiting the fee for processing a request for an expedited letter from the executive director stating the total depth of surface casing needed during the drilling of wells to protect usable ground waters in the state and required for the processing of certain permits from the railroad commission from exceeding \$75), Water Code.

SECTION 2.08. (a) Requires the railroad commission to adopt rules to implement the changes in law made by this article not later than March 1, 2012.

(b) Provides that a rule, form, policy, or procedure of TCEQ related to the changes in law made by this article continues in effect as a rule, form, policy, or procedure of the railroad commission and remains in effect until amended or replaced by that agency.

ARTICLE 3. PUBLIC INTEREST

SECTION 3.01. Amends Subchapter F, Chapter 5, Water Code, by adding Section 5.239, as follows:

Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) Requires the executive director to ensure that TCEQ is responsive to environmental and citizens' concerns, including environmental quality and consumer protection.

(b) Requires the executive director to develop and implement a program to:

- (1) provide a centralized point for the public to access information about TCEQ and to learn about matters regulated by TCEQ;
- (2) identify and assess the concerns of the public in regard to matters regulated by TCEQ; and
- (3) respond to the concerns identified by the program.

SECTION 3.02. Amends Section 5.271, Water Code, as follows:

Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE OFFICE OF PUBLIC INTEREST COUNSEL. Provides that the office of public interest counsel (office) is created to ensure that TCEQ promotes the public's interest, rather than promotes the public's interest and is responsive to environmental and citizens' concerns including environmental quality and consumer protection. Provides that the primary duty of the office is to represent the public interest as a party to matters before TCEQ.

SECTION 3.03. Amends Subchapter G, Chapter 5, Water Code, by adding Section 5.2725, as follows:

Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) Requires the office to report to TCEQ each year in a public meeting held on a date determined by TCEQ to be timely for TCEQ to include the reported information in TCEQ's reports under Sections 5.178(a) (requiring TCEQ, on or before December 1 of each even-numbered year, to file with the governor and the members of the legislature a written report that includes a statement of the activities of TCEQ during the preceding fiscal biennium) and (b) (requiring that the report due by December 1 of an even-numbered year include certain information) and in TCEQ's biennial legislative appropriations requests as appropriate:

- (1) an evaluation of the office's performance in representing the public interest in the preceding year;
- (2) an assessment of the budget needs of the office, including the need to contract for outside expertise; and
- (3) any legislative or regulatory changes recommended under Section 5.273 (Duties of the Public Interest Counsel).

(b) Requires TCEQ and the office to work cooperatively to identify performance measures for the office.

SECTION 3.04. Amends Subchapter G, Chapter 5, Water Code, by adding Section 5.276, as follows:

Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION. (a) Requires TCEQ by rule, after consideration of recommendations from the office, to establish factors the public interest counsel must consider before the public interest counsel decides to represent the public interest as a party to a TCEQ proceeding.

(b) Requires that rules adopted under this section include:

- (1) factors to determine the nature and extent of the public interest; and
- (2) factors to consider in prioritizing the workload of the office.

ARTICLE 4. COMPLIANCE AND ENFORCEMENT

SECTION 4.01. Amends Section 5.751, Water Code, as follows:

Sec. 5.751. APPLICABILITY. Provides that this subchapter applies to programs under the jurisdiction of TCEQ under Chapters 26 (Water Quality Control), 27 (Injection Wells), and 32 (Subsurface Area Drip Dispersal System) of this code and Chapters 361 (Solid Waste Disposal Act), 375 (Removal of Convenience Switches), 382 (Clean Air Act), and 401 (Radioactive Materials and Other Sources of Radiation), Health and Safety Code. Makes a nonsubstantive change.

SECTION 4.02. Amends Section 5.752(1), Water Code, to redefine "applicable legal requirement."

SECTION 4.03. Amends the heading to Section 5.753, Water Code, to read as follows:

Sec. 5.753. STANDARDS FOR EVALUATING AND USING COMPLIANCE HISTORY.

SECTION 4.01. Amends Section 5.753, Water Code, by amending Subsections (a), (b), and (d), and adding Subsection (d-1), as follows:

(a) Requires TCEQ by rule, consistent with other law and the requirements necessary to maintain federal program authorization, to develop standards, rather than a uniform standard, for evaluating and using compliance history that ensure consistency. Authorizes TCEQ, in developing the standards, to account for differences among regulated entities.

(b) Requires that the components of compliance history include:

- (1) enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of TCEQ, rather than enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government relating to compliance with applicable legal requirements under the jurisdiction of TCEQ or the United States Environmental Protection Agency;
- (2) notwithstanding any other provision of this code, orders issued under Section 7.070 (Findings of Fact Not Required; Reservations);
- (3) to the extent readily available to TCEQ, enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental rules of the United States Environmental Protection Agency, rather than violations of environmental laws of other states; and

(4) changes in ownership.

(d) Requires that the listing, if TCEQ includes a notice of violation in a compliance history, be preceded by a certain statement prominently displayed. Sets forth the

language of the statement. Provides that a notice of violation administratively determined to be without merit may not, rather than shall not, be included in a compliance history. Deletes existing text requiring the set of components to include notice of violations.

(d-1) Prohibits TCEQ, for purposes of listing compliance history, from including as a notice of violation information received by TCEQ as required by Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) unless TCEQ issues a written notice of violation. Authorizes final enforcement orders or judgments resulting from self-reported Title V deviations or violations to be considered as compliance history components for purposes of determining compliance history.

SECTION 4.05. Amends Section 5.754, Water Code, by amending Subsections (a), (b), (c), (d), (e), (g), and (h) and adding Subsection (e-1), as follows:

(a) Requires TCEQ by rule to establish a set of standards for the classification of a person's compliance history as a means of evaluating compliance history. Authorizes TCEQ to consider the person's classification when using compliance history under Subsection (e).

(b) Provides that rules adopted under Subsection (a), rather than this section:

(1) are required to, at a minimum, provide for three classifications of compliance history in a manner adequate to distinguish among:

(A) unsatisfactory performers, or regulated entities that in TCEQ's judgment perform below minimal acceptable performance standards established by TCEQ, rather than poor performers, or regulated entities that in TCEQ's judgment perform below average;

(B) satisfactory, rather than average performers, or regulated entities that generally comply with environmental regulations; and

(C) high performers, or regulated entities that have an above-satisfactory, rather than above-average, compliance record;

(2) are authorized to establish a category of unclassified performers, or regulated entities for which TCEQ does not have adequate compliance information about the site; and

(3) are required to take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.).

Makes nonsubstantive changes.

(c) Requires TCEQ, in classifying a person's compliance history, to:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) establish criteria for classifying a repeat violator, giving consideration to the size and complexity of the site at which the violations occurred, and limiting consideration to violations of the same nature and the same environmental media that occurred in the preceding five years, rather than establish criteria for classifying a repeat violator, giving consideration to the number and complexity of facilities owned or operated by the person; and

(3) consider:

(A) the significance of the violation and whether the person is a repeat violator;

(B) the size and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.); and

(C) the potential for a violation at the site that is attributable to the nature and complexity of the site.

(d) Authorizes TCEQ by rule to require a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance, rather than requires TCEQ by rule to establish methods of assessing the compliance history of regulated entities for which it does not have adequate compliance information. Makes a nonsubstantive change.

(e) Requires TCEQ by rule to provide for the use of compliance history, rather than compliance history classifications, in TCEQ decisions in certain areas.

(e-1) Prohibits the amount of the penalty enhancement or escalation attributed to compliance history from exceeding 100 percent of the base penalty for an individual violation as determined by TCEQ's penalty policy. Prohibits notices of violation from being used individually for penalty enhancement or escalation.

(g) Requires that rules adopted under Subsection (e) for the use of compliance history provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is classified as unsatisfactory according to TCEQ standards, rather than whose compliance performance is in the lowest classification developed under this section.

(h) Requires TCEQ by rule to, at a minimum, prohibit a person whose compliance history is classified as unsatisfactory according to TCEQ standards from obtaining or renewing a flexible permit under the program administered by TCEQ under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by TCEQ under Section 5.758 (Regulatory Flexibility), rather than requires TCEQ by rule to, at a minimum, prohibit a person whose compliance history is classified in the lowest classification developed under this section from receiving an announced inspection, and obtaining or renewing a flexible permit under the program administered by TCEQ under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by TCEQ under Section 5.758. Makes nonsubstantive changes.

SECTION 4.06. Amends Section 5.755(b), Water Code, to require that the strategically directed regulatory structure offer incentives based on a person's compliance history, rather than a person's compliance history classification, and any voluntary measures undertaken by the person to improve environmental quality.

SECTION 4.07. Amends Section 5.756, Water Code, by adding Subsection (e), to require that the information, before compliance performance information about a site may be placed on the Internet under this subchapter, be evaluated through a quality assurance and control procedure, including a 30-day period for the owner or operator of the site to review and comment on the information.

SECTION 4.08. Amends Sections 5.758(a), (b), (d), and (h), Water Code, as follows:

(a) Authorizes TCEQ by order to exempt an applicant from a requirement of a statute or TCEQ rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is as protective of the environment and the public health as the method or standard, rather than that is more protective of the environment and the public health than the

method or standard, prescribed by the statute or TCEQ rule that would otherwise apply, and not inconsistent with federal law.

(b) Prohibits TCEQ from exempting an applicant under this section unless the applicant can present to TCEQ evidence that the alternative the applicant proposes is as protective of the environment and the public health as the method or standard prescribed by the statute or TCEQ rule that would otherwise apply, rather than prohibits TCEQ from exempting an applicant under this section unless the applicant can present to TCEQ documented evidence of benefits to environmental quality that will result from the project the applicant proposes.

(d) Requires that TCEQ's order provide a description, rather than a specific description, of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

(h) Requires TCEQ, in implementing the program of regulatory flexibility authorized by this section, to carry out certain actions, including promoting, rather than marketing the program to businesses in the state through all available appropriate media.

SECTION 4.09. Amends Subchapter A, Chapter 7, Water Code, by adding Section 7.006, as follows:

Sec. 7.006. ENFORCEMENT POLICIES. (a) Requires TNRCC by rule to adopt a general enforcement policy that describes TNRCC's approach to enforcement.

(b) Requires TNRCC to assess, update, and publicly adopt specific enforcement policies regularly, including policies regarding the calculation of penalties and deterrence to prevent the economic benefit of noncompliance.

(c) Requires TNRCC to make the policies available to the public, including by posting the policies on TNRCC's Internet website.

SECTION 4.10. Amends Sections 7.052(a) and (c), Water Code, as follows:

(a) Prohibits the amount of the penalty for a violation of Chapter 37 (Occupational Licensing and Registration) of this Code, Chapter 366 (On-Site Sewage Disposal Systems), 371 (Used Oil Collection, Management, and Recycling), or 372 (Environmental Performance Standards for Plumbing Fixtures), Health and Safety Code, or Chapter 1903 (Irrigators), Occupations Code, from exceeding \$5,000 a day, rather than from exceeding \$2,500 a day, for each violation.

(c) Prohibits the amount of the penalty for all other violations within the jurisdiction of TNRCC to enforce from exceeding \$25,000 a day, rather than from exceeding \$10,000 a day, for each violation.

SECTION 4.11. Amends Section 7.067, Water Code, as follows:

Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) Authorizes TNRCC to compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. Authorizes TNRCC, in determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, to consider a respondent's willingness to contribute to supplemental environmental projects that are approved by TNRCC, giving preference to projects that benefit the community in which the alleged violation occurred. Authorizes TNRCC to encourage the cleanup of contaminated property through the use of supplemental environmental projects. Authorizes TNRCC to approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). Prohibits TNRCC, except as provided by Subsection (a-1), from approving a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate

environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(a-1) Authorizes TNRCC to approve a supplemental environmental project that is necessary to bring a respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation if the respondent is a local government.

(a-2) Requires TNRCC to develop a policy to prevent regulated entities from systematically avoiding compliance through the use of supplemental environmental projects under Subsection (a-1), including a requirement for an assessment of:

- (1) the respondent's financial ability to pay administrative penalties;
- (2) the ability of the respondent to remediate the harm or come into compliance; and
- (3) the need for corrective action.

(b) Defines, in this section, "local government." Makes a nonsubstantive change.

SECTION 4.12. Amends Section 13.4151(a), Water Code, as follows:

(a) Authorizes TCEQ, if a person, affiliated interest, or entity subject to the jurisdiction of TCEQ violates this chapter or a rule or order adopted under this chapter, to assess a penalty against that person, affiliated interest, or entity as provided by this section. Authorizes the penalty to be in an amount not to exceed \$5,000, rather than \$500 a day. Provides that each day a violation continues may be considered a separate violation.

SECTION 4.13. Amends Section 26.028(d), Water Code, to authorize TNRCC, notwithstanding any other provision of this chapter, at a regular meeting without the necessity of holding a public hearing, to approve an application to renew or amend a permit if certain conditions apply, including that TNRCC determines that an applicant's compliance history under the method for using compliance history, rather than the method for evaluating compliance history, developed by TNRCC under Section 5.754 (Classification and Use of Compliance History) raises no issues regarding the applicant's ability to comply with a material term of its permit.

SECTION 4.14. Amends Section 26.0281, Water Code, to make a conforming change.

SECTION 4.15. Amends Section 26.040(h), Water Code, to require TNRCC, notwithstanding other provisions of this chapter, after hearing, to deny or suspend a discharger's authority to discharge under a general permit if TNRCC determines that the discharger's compliance history is classified as unsatisfactory according to TNRCC standards, rather than the discharger's compliance history is in the lowest classification, under Sections 5.753 (Standard for Evaluating Compliance History) and 5.754 and rules adopted and procedures developed under those sections.

SECTION 4.16. Amends Section 26.3467, Water Code, by adding Subsections (d) and (e), as follows:

(d) Prohibits a person from delivering any regulated substance into an underground storage tank regulated under this chapter unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346 (Registration Requirements). Authorizes TNRCC to impose an administrative penalty against a person who violates this subsection. Requires TNRCC to adopt rules as necessary to enforce this subsection.

(e) Provides that it is an affirmative defense to the imposition of an administrative penalty for a violation of Subsection (d) that the person delivering a regulated substance into an underground storage tank relied on:

- (1) a valid paper delivery certificate presented by the owner or operator of the underground storage tank or displayed at the facility associated with the underground storage tank;
- (2) a temporary delivery authorization presented by the owner or operator of the underground storage tank or displayed at the facility associated with the underground storage tank; or
- (3) registration and self-certification information for the underground storage tank obtained from TNRCC 's Internet website not more than 30 days before the date of delivery.

SECTION 4.17. Amends Section 26.351, Water Code, by adding Subsections (c-1) and (c-2), as follows:

(c-1) Authorizes TNRCC to undertake corrective action to remove an underground or aboveground storage tank that:

- (1) is not in compliance with the requirements of this chapter;
- (2) is out of service;
- (3) presents a contamination risk; and
- (4) is owned or operated by a person who is financially unable to remediate the tank.

(c-2) Requires TNRCC to adopt rules to implement Subsection (c-1), including rules regarding:

- (1) the determination of the financial ability of the tank owner or operator to remove the tank; and
- (2) the assessment of the potential risk of contamination from the site.

SECTION 4.18. Amends Section 26.3573(d), Water Code, as follows:

(d) Authorizes TNRCC to use the money in the petroleum storage tank remediation account to pay:

- (1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program;
- (2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by TNRCC or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter;
- (3) subject to the conditions of Subsection (f) (relating to authorizing TNRCC to pay from the account expenses, whether or not the hydraulic fluid or spent oil contamination is mixed with petroleum product contamination) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from

hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility;

(4) expenses associated with assuring compliance with TNRCC's applicable underground or aboveground storage tank administrative and technical requirements, including technical assistance and support, inspections, enforcement, and the provision of matching funds for grants; and

(5) expenses associated with investigation, cleanup, or corrective action measures performed under Section 26.351(c-1).

SECTION 4.19. Amends Section 26.3574, Water Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that a fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Requires each operator of a bulk facility on withdrawal from bulk of a petroleum product to collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) not more than \$3.125, rather than \$3.75, for each delivery into a cargo tank having a capacity of less than 2,500 gallons;

(2) not more than \$6.25, rather than \$7.50, for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) not more than \$9.37, rather than \$11.75, for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) not more than \$12.50, rather than \$15.00, for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) not more than \$6.25, rather than \$7.50, for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.

Deletes existing text relating to withdrawal from bulk of a petroleum product for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011.

(b-1) Requires TNRCC by rule to set the amount of the fee in Subsection (b) in an amount not to exceed the amount necessary to cover TNRCC's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose.

SECTION 4.20. Amends Section 27.025(g), Water Code, to make conforming changes.

SECTION 4.21. Amends Section 27.051(d), Water Code, to make a conforming change.

SECTION 4.22. Amends Section 32.101(c), Water Code, to make a conforming change.

SECTION 4.23. Amends Section 49.198(a), Water Code, to authorize a district to elect to file annual financial reports with the executive director in lieu of the district's compliance with Section 49.191 (Duty to Audit) provided certain conditions are met, including that the district did not have gross receipts from operations, loans, taxes, or contributions in excess of \$250,000, rather than \$100,000, during the fiscal period.

SECTION 4.24. Amends Sections 361.089(a), (e), and (f), as follows:

(a) Authorizes TNRCC, for good cause, to deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land

use, or for having a compliance history that is classified as unsatisfactory according to TNRCC standards, rather than is in the lowest classification, under Sections 5.753, and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(e)-(f) Makes conforming changes.

SECTION 4.25. Amends Section 382.0518, Health and Safety Code, by amending Subsection (c) and adding Subsection (j), as follows:

(c) Authorizes TNRCC, in considering the issuance, amendment, or renewal of a permit, to consider the applicant's compliance history in accordance with the method for using compliance history, rather than evaluating compliance history, developed by TNRCC under Section 5.754, Water Code.

(j) Prohibits TNRCC from issuing a permit for a new electric generating facility unless the applicant has submitted an assessment that compares the best available control technologies for a water-cooling technology to the technology proposed for use by the facility.

SECTION 4.26. Amends Section 382.056(o), Health and Safety Code, to make conforming changes.

SECTION 4.27. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.059, as follows:

Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) Provides that this section applies to a permit amendment application submitted to allow an electric generating facility to comply with Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412), including a requirement to use applicable maximum achievable control technology.

(b) Requires TNRCC to provide an opportunity for a public hearing and the submission of public comment on an application for a permit amendment under this section in the manner provided by Section 382.0561 (Federal Operating Permit; Hearing).

(c) Requires TNRCC to send notice of a decision on an application for a permit amendment under this section in the manner provided by Section 382.0562 (Notice of Decision).

(d) Authorizes a person affected by a decision of TNRCC to issue or deny a permit amendment to move for rehearing and is entitled to judicial review under Section 382.032 (Appeal of Commission Action).

SECTION 4.28. Amends Section 401.110(a), Health and Safety Code, to make a conforming change.

SECTION 4.29. Amends Section 401.112(a), Health and Safety Code, to make a conforming change.

SECTION 4.30. (a) Requires TCEQ by rule, not later than September 1, 2012, to establish the method for evaluating compliance history as required by Section 5.753(a), Water Code, as amended by this article. Requires TCEQ, until TCEQ adopts that method, to continue in effect its current standard for evaluating compliance history.

(b) Provides that the changes in law made by Sections 7.052 and 13.4151, Water Code, as amended by this article, apply only to a violation that occurs on or after the effective date of this Act. Provides that, 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. Provides

that a violation that occurs before the effective date of this Act is covered by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(c) Provides that the change in law made by Section 26.3467(d), Water Code, as added by this article, applies only to a delivery of a regulated substance to a petroleum storage tank made on or after the effective date of this Act.

SECTION 4.31. Makes application of Section 49.198(a), Water Code, as amended by this Act, prospective.

ARTICLE 5. WATER RIGHTS

SECTION 5.01. Amends Section 11.002(12), Water Code, to redefine "agriculture."

SECTION 5.02. Amends Section 11.031, Water Code, by adding Subsections (d)-(f), as follows:

(d) Requires each person who has a water right issued by TNRCC or who impounds, diverts, or otherwise uses state water to maintain water use information required under Subsection (a) (relating to requiring each person who has a water right issued by TNRCC or who impounded, diverted, or otherwise used state water during the preceding calendar year to submit a written report to TNRCC) on a monthly basis during the months a water rights holder uses permitted water. Requires the person to make the information available to TNRCC on the TNRCC's request.

(e) Authorizes TNRCC to request information, except as provided under Subsection (a), maintained under Subsection (d) only during a drought or other emergency shortage of water.

(f) Provides that Subsection (e) does not affect the authority of a watermaster to obtain water use information under other law.

SECTION 5.03. Amends Subchapter B, Chapter 11, Water Code, by adding Section 11.053, as follows:

Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a) Authorizes the executive director by order, during a period of drought or other emergency shortage of water, as defined by TNRCC rule, to require any person or entity that receives or may receive a water transfer under this section to comply with drought management measures adopted by TNRCC.

(b) Authorizes the executive director by order, during a period of drought or other emergency shortage of water, to:

(1) temporarily suspend the right of any person who holds a water right to use the water; and

(2) adjust the diversion of water by water rights holders to address an imminent hazard to public health.

(c) Requires the executive director in ordering a suspension or an allocation adjustment under this section to ensure that an action taken:

(1) maximizes the beneficial use of water;

(2) minimizes the impact on water rights holders; and

(3) prevents the waste of water; and

(4) to the greatest extent practicable, conforms to the order of preferences establishes by Section 11.024 (Appropriation; Preferences).

(d) Requires TNRCC to adopt rules to implement this section, including rules:

(1) defining a drought or other emergency shortage of water for purposes of this section;

(2) specifying the conditions under which the executive director may issue an order under this section, terms of an order issued under this section, including the maximum duration of a temporary suspension or adjustment under this section, and procedures for appealing an order issued under this section to TNRCC; and

(3) for drought management measures that may be implemented during times of drought or other emergency shortage of water, as provided in Subsection (a).

SECTION 5.04. Amends Subchapter D, Chapter 11, Water Code, by adding Section 11.1273, as follows:

Sec. 11.1273. ADDITIONAL REQUIREMENT: REVIEW OF AMENDMENTS TO CERTAIN WATER MANAGEMENT PLANS. (a) Provides that this section applies only to a water management plan consisting of a reservoir operation plan for the operation of two water supply reservoirs that was originally required by a court order adjudicating the water rights for those reservoirs.

(b) Requires the executive director, not later than the first anniversary of the date the executive director determines that an application to amend a water management plan is administratively complete, to complete a technical review of the plan.

(c) Requires the applicant, if the executive director submits a written request for additional information to the applicant, to submit the requested information to the executive director not later than the 30th day after the date the applicant receives the request or not later than the deadline agreed to by the executive director and the applicant, if applicable. Provides that the review period required by Subsection (b) for completing the technical review is tolled until the date the executive director receives the requested information from the applicant.

(d) Requires TNRCC to provide an opportunity for public comment and a public hearing on the application, consistent with the process for other water rights applications.

(e) Requires TNRCC, if TNRCC receives a request for a hearing before the period for submitting public comments and requesting a hearing expires, to act on the request for a hearing and, if the request is denied, act on the application not later than the 60th day after the date the period expires. Authorizes the executive director, if a request for a hearing is not submitted before the period expires, to act on the application.

SECTION 5.05. Amends Section 11.326, Water Code, by adding Subsections (g) and (h), as follows:

(g) Requires the executive director of TNRCC, for a water basin in which a watermaster is not appointed, to:

(1) evaluate the water basin at least once every five years to determine whether a watermaster should be appointed; and

(2) report the findings and make recommendations to TNRCC.

(h) Requires TNRCC to:

(1) determine the criteria or risk factors to be considered in an evaluation under Subsection (g); and

(2) include the findings and recommendations under Subsection (g) in TNRCC's biennial report to the legislature.

ARTICLE 6. FUNDING

SECTION 6.01. Amends Section 401.246(a), Health and Safety Code, as follows:

(a) Requires that compact waste disposal fees adopted by TCEQ be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244 (Host County Public Projects);

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility;

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by TCEQ under law and TCEQ rules; and

(6) provide an amount necessary to support the activities of the Texas Low-Level Radioactive Waste Compact Commission.

SECTION 6.02. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Section 401.251, as follows:

Sec. 401.251. **LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION ACCOUNT.** (a) Provides that the low-level radioactive waste disposal compact commission account is an account in the general revenue fund.

(b) Requires TCEQ to deposit in the account the portion of the fee collected under Section 401.245 (Compact Waste Disposal Fees) that is calculated to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006 (Text of Compact) of this code).

(c) Authorizes money in the account to be appropriated only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

SECTION 6.03. Amends Sections 5.701(n) and (p), Water Code, as follows:

(n)(1) Requires each provider of potable water or sewer utility service to collect a regulatory assessment from each retail customer as follows:

(A) Requires a public utility as defined in Section 13.002 (Definitions), rather than Section 13.002 of this code, to collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) Requires a water supply or sewer service corporation as defined in Section 13.002, rather than Section 13.002 of this code, to collect from each retail customer a regulatory assessment equal to one percent, rather than one-half of one percent of the charge for retail water or sewer service.

(C) Requires a district as defined in Section 49.001 (Definitions), rather than of this code, that provides potable water or sewer utility service to retail customers to collect from each retail customer a regulatory assessment equal to one-half of one percent, of the charge for retail water or sewer service.

(2) Provides that the regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) Authorizes the assessments collected under this subsection to be appropriated by a rider to the General Appropriations Act to an agency with duties related to water and sewer utility regulation solely to pay costs and expenses incurred by the agency in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13 (Water Rates and Services), rather than requires TCEQ to use the assessments collected under this subsection solely to pay costs and expenses incurred by TCEQ in the regulation of districts, water supply or sewer services corporations, and public utilities under Chapter 13, Water Code.

(4)-(7) Makes no changes to these subdivisions.

(p) Authorizes fees collected for deposit to the water resource management account under the following statutes, notwithstanding any other law, to be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsection (b) (providing that, except as otherwise provided by law, the fee for filing an application or petition is \$100 plus the cost of any required notice) to the extent those fees are paid by water districts, and Subsections (e) (requiring a person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion to pay a one-time nonrefundable application fee), (f) (requiring a person who files a bond issue application with TCEQ to pay an application fee set by TCEQ), and (n) (requiring each provider of potable water or sewer utility service to collect a regulatory assessment from each retail customer);

(2) Redesignates existing Subdivision (3) as Subdivision (2) and deletes existing text of Subdivision 2 relating to fees under Sections 13.4521 (Filing Rate Change Request; Fee) and 13.4522 (Certificate of Public Convenience and Necessity; Sale, Transfer, or Merger; Application Fee); or

(3) Section 367.010 (Fees), Health and Safety Code.

SECTION 6.04. Repealer: Subchapter L (Commission Financing), Chapter 13, Water Code.

SECTION 6.05. Makes application of the changes in law made by Section 5.701, Water Code, as amended by this article, prospective to January 1, 2012.

ARTICLE 7. WATER AND SEWER UTILITIES

SECTION 7.01. Amends Subchapter E, Chapter 13, Water Code, by adding Section 13.1325, as follows:

Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. Requires the state agency with jurisdiction over rates charged by water and sewer utilities, on request, to provide, at a reasonable cost, electronic copies of all information provided to the agency under Sections 13.016 (Record of Proceedings; Right to Hearing), 13.043 (Appellate Jurisdiction), and 13.187 (Statement of Intent to Change Rates; Hearing; Determination of Rate Level), to the extent that the information is available electronically and is not confidential.

ARTICLE 8. ABOLITION OF THE ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

SECTION 8.01. Amends the heading to Chapter 367, Health and Safety Code, to read as follows:

CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH

SECTION 8.02. Amends Section 367.001, Health and Safety Code, as follows:

Sec. 367.001. DEFINITIONS. Redefines, in this chapter, "commission." Deletes existing definition of "council." Makes a nonsubstantive change.

SECTION 8.03. Amends Section 367.007, Health and Safety Code, as follows:

Sec. 367.007. ADMINISTRATION. (a) Redesignates existing Subsection (c) as Subsection (a). Authorizes TCEQ, rather than the On-Site Wastewater Treatment Research Council (council), to accept grants and donations from other sources to supplement the fees collected under Section 367.010. Requires that grants and donations be deposited to the credit of the water resource management account, rather than the on-site wastewater treatment research account and authorizes that they be disbursed as TCEQ, rather than the council, directs and in accordance with Section 367.008.

(b) Redesignates existing Subsection (d) as Subsection (b). Provides that administrative and facilities support costs are payable from the water resources management account, rather than the one-site wastewater treatment research account.

Deletes existing Subsection (a) providing that the council is not an advisory body to TNRCC. Deletes existing text requiring TNRCC, at the direction of the council, to implement council decisions.

Deletes existing Subsection (b) authorizing the council to enter into an interagency contract with TNRCC to provide staff and other administrative support as required to improve the quality of wastewater treatment and reduce the cost of providing wastewater treatment to consumers.

Deletes existing Subsection (e) authorizing the council to award grants and enter into contracts in its own name and on its own behalf.

SECTION 8.04. Amends Section 367.008, Health and Safety Code, as follows:

Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) Requires TCEQ, rather than the council, to establish procedures for awarding competitive grants and disbursing grant money.

(b) Authorizes TCEQ, rather than the council, to award competitive grants to:

(1) support applied research and demonstration projects by accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

(2) enhance technology transfer regarding on-site wastewater treatment by using educational courses, seminars, symposia, publications, and other forms of information dissemination.

(c) Requires TCEQ to seek the advice of relevant experts when choosing research topics, awarding grants, and holding educational conferences associated with activities under this chapter. Deletes existing text authorizing the council to award grants or make other expenditures authorized under this chapter only after the comptroller of public accounts certifies that the on-site wastewater treatment research account contains enough money to pay for those expenditures.

SECTION 8.05. Amends Section 367.009, Health and Safety Code, to require that money collected and appropriated for the purposes of this chapter be disbursed as TCEQ, rather than the council, directs and in accordance with Section 367.008.

SECTION 8.06. Amends Section 367.010(d), Health and Safety Code, to require that fee proceeds be deposited to the credit of the water resources management account, rather than the on-site wastewater treatment research account.

SECTION 8.07. Repealer: Section 367.002 (Composition of Council), Health and Safety Code.

Repealer: Section 367.003 (Application of Sunset Act), Health and Safety Code.

Repealer: Section 367.004 (Terms), Health and Safety Code.

Repealer: Section 367.005 (Officers; Meetings), Health and Safety Code.

Repealer: Section 367.006 (Compensation; Expenses), Health and Safety Code.

Repealer: Section 367.011 (On-Site Wastewater Treatment Research Account), Health and Safety Code.

SECTION 8.08. (a) Requires TCEQ, on the effective date of this Act, to assume the administration of all grants of the council in existence on that date.

(b) Requires TCEQ to assume all contracts held by the council on the effective date of this Act, including all rights and obligations associated with the contracts.

ARTICLE 9. RATE NOTIFICATION

SECTION 9.01. Amends Section 13.043(i), Water Code, as follows:

(i) Requires the governing body of a municipally owned utility or a political subdivision, within 60 days, rather than within 30 days, after the date of a final decision on a rate change, to provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. Authorizes the governing body of a municipally owned utility or a political subdivision to provide

the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

SECTION 9.02. Amends Section 13.187(b), Water Code, to require that a copy of the statement of intent be mailed, sent by e-mail, or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules.

ARTICLE 10. CONTESTED CASE HEARINGS

SECTION 10.01. Amends Section 382.056(n), Health and Safety Code, as follows:

(n) Defines, in this subsection, "affected person." Requires TNRCC, except as provided by Section 382.0561, to consider a request that TNRCC reconsider the executive director's decision or hold a public hearing in accordance with the applicable procedures provided by Sections 5.315, 5.316, 5.556 (Request for Reconsideration or Contested Case Hearing), and 5.557 (Direct Referral to Contested Case Hearing), Water Code. Provides that in a public hearing or contested case hearing granted in response to an affected person's request under Section 5.556, Water Code, regarding the issuance of a permit under Section 382.0518 (Preconstruction Permit), a permit renewal under Section 382.055 (Review and Renewal of Preconstruction Permit), or a related permit condition, the burden of proof is on the affected person to show that the permit should not be issued or renewed or that a related permit condition should be imposed, modified, or omitted.

SECTION 10.02. Amends Section 5.115(b), Water Code, as follows:

(b) Requires TCEQ, at the time an application for a permit or license under this code is filed with the executive director of TCEQ (executive director) and is administratively complete, to give notice of the application to any person who may be affected by the granting of the permit or license. Authorizes a state agency that receives notice under this subsection to submit comments to TCEQ in response to the notice but is prohibited from contesting the issuance of a permit or license by TCEQ. Defines, for the purposes of this subsection, "state agency."

SECTION 10.03. Amends Sections 5.228(c) and (d), Water Code, as follows:

(c) Requires the executive director to participate as a party in contested case permit hearings before TCEQ or the SOAH to provide information to complete the administrative record, and support the executive director's position developed in the underlying proceeding, rather than authorizes the executive director to participate as a party in contested case permit hearings before TCEQ or SOAH for the sole purpose of providing information to complete the administrative record. Deletes existing text requiring TCEQ by rule to specify the factors the executive director is required to consider in determining, case by case, whether to participate as a party in a contested case permit hearing; and requiring TCEQ, in developing the rules under this subsection to consider, among other factors the technical, legal, and financial capacity of the parties to the proceeding, whether the parties to the proceeding have participated in a previous contested case hearing, the complexity of the issues presented, and the available resources of TCEQ staff.

(d) Prohibits the executive director or the executive director's designated representative, in a contested case hearing relating to a permit application, from rehabilitating the testimony of a witness unless the witness is a TCEQ employee, rather than a TCEQ employee testifying for the sole purpose of providing information to complete the administrative record.

SECTION 10.04. Amends Subchapter H, Chapter 5, Water Code, by adding Sections 5.315 and 5.316, as follows:

Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN TESTIMONY. Requires that all discovery, in a contested case hearing delegated by TCEQ to SOAH that

uses prefiled written testimony, be completed before the deadline for the submission of that testimony, except for water and sewer ratemaking proceedings.

Sec. 5.316. DELEGATED CASES REGARDING PERMIT APPLICATION. Provides that in a contested case hearing delegated by TCEQ to SOAH regarding a permit application, the rules, guidance, and policies in effect at the time the technical review portion of the application process closes are the applicable rules, guidance, and policies for the contested case hearing.

SECTION 10.05. Amends Section 5.556, Water Code, by adding Subsection (g) to provide that in a contested case hearing regarding the issuance of a permit or specific conditions in a permit, the burden of proof is on the affected person who requested the hearing to show that the permit should not be issued or renewed or that a related permit condition should be imposed, modified, or omitted.

SECTION 10.06. Repealer: Section 5.228(e) (relating to prohibiting the executive director or the executive director's designated representative from assisting a permit applicant in meeting its burden of proof in a hearing before TCEQ or SOAH unless the permit applicant meets certain conditions; and requiring TCEQ to adopt rules establishing categories of permit applicants eligible to receive assistance), Water Code.

SECTION 10.07. (a) Makes application of Section 5.115(b), Water Code, as amended by this article, prospective.

(b) Provides that the changes in law made by this article apply to a proceeding before SOAH that is pending or filed on or after September 1, 2011.

ARTICLE 11. EFFECTIVE DATE

SECTION 11.01. Effective date: September 1, 2011.