

BILL ANALYSIS

C.S.S.B. 635
By: Nichols
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a water or sewer utility is allowed to charge its proposed rate for water and sewer even if the rate increase is being protested. The utility can charge its proposed rate until the completion of the contested case proceeding which can last years. Essentially, ratepayers are forced to pay the higher proposed rate even before the Texas Commission on Environmental Quality (TCEQ) issues a final ruling.

In order to give ratepayers some relief while protesting a rate increase, C.S.S.B. 635 allows TCEQ's executive director to establish an interim rate. The interim rate will be applied to the ratepayers until the conclusion of a contested rate proceeding.

Additionally, C.S.S.B. 635 grants the executive director authority to issue administrative orders in uncontested cases to transfer CCNs and to convert or dissolve a water district. These uncontested cases have to go before the TCEQ. This will save the applicant time because the executive director will be able to approve the request sooner. Finally, the bill also allows an exemption for small sewer systems that is already provided to small water utility systems. Small water utility systems with less than 15 connections can register as an exempt utility and do not have to obtain a CCN unless it is in another utility's service area.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 13.043(h), Water Code, as follows:

(h) Authorizes the Texas Commission on Environmental Quality (TCEQ) or the executive director of TCEQ (executive director) to establish interim rates to be in effect until a final decision is made in an appeal filed under Subsection (a) (relating to authorizing any party to a rate proceeding before the governing body of the municipality to appeal the decision to TCEQ), (b) (relating to authorizing certain ratepayers listed to appeal the decision to TCEQ), or (f) (relating to authorizing certain retail public utilities to appeal the decision to TCEQ). Deletes existing text authorizing TCEQ to establish interim rates on a motion by the executive director or by the appellant under subsection (a), (b), or (f) of this section.

SECTION 2. Amends Sections 13.187(b) and (l), Water Code, as follows:

(b) Requires that a copy of the statement of intent must be mailed or delivered to the appropriate offices of each affected municipality, to the executive director, and to any affected persons as required by the regulatory authority's rules.

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

SECTION 3. Amends Section 13.242(c), Water Code as follows:

- (c) Authorizes the commission by rule to allow a municipality or utility or water supply corporation to render sewer service, in addition to retail water service, without a certificate of public convenience and necessity if the municipality has given applicable notice under Section 13.255 that it intends to provide such service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

SECTION 4. Amends Section 13.248, Water Code as follows:

Sec. 13.248 Establishes that contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity when approved by the executive director, as an alternative to the commission, after public notice. Removes a requirement that such validation, enforcement, and incorporation be after a public hearing.

SECTION 5. Amends Section 49.321, Water Code as follows:

Sec 49.321 Authorizes the executive director, in addition to the commission, and after notice, to dissolve any water district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

SECTION 6. Amends Section 49.324, Water Code as follows:

Sec. 49.324. Authorizes the commission or executive director to enter an order dissolving a district if the commission or executive director finds that the district has performed none of the functions for which it was created for a period of five consecutive years and that the district has no outstanding bonded indebtedness. Removes a provision that allows the order dissolving the district to be at the conclusion of the hearing. Removes a provision referring before the day of the proceeding.

SECTION 7. Amends Section 49.326(a), Water Code as follows:

- (a) Appeals from an order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located. Removes reference to the order to “a commission” order.

SECTION 8. Amends Section 54.030(b), Water Code, as follows:

- (b) Requires that the governing body of a district which desires to convert into a district operating under this chapter must adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution must also request that the commission approve the conversion of the district. Removes a provision that the resolution must request the commission to hold a hearing.

SECTION 9. Amends Section 54.032, Water Code as follows:

- (a) Requires that notice of a conversion must be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. Removes reference to a hearing.
- (b) Requires that the notice must be published once a week for two consecutive weeks. Removes a provision requiring the first publication to be made not less than 14 full days before the time set for the hearing.
- (c) Requires that the notice must set out the adopted district resolution in full and notify all interested persons how they may offer comments for or against the proposal

contained in the resolution. Removes provisions requiring the notice to state the time and place of the hearing and to appear and offer testimony.

SECTION 10. Section 54.033, Water Code is amended as follows:

- (a) Requires that if the commission or the executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, the commission or executive director must enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required. Removes a provision referencing a hearing.
- (b) Requires that if the commission or the executive director finds that the conversion of the district would not serve in the best interest of the district and would not be a benefit to the land and property involved in the district, either the commission or the executive director must order against the conversion of the district into one operating under this chapter.
- (c) Requires that the findings of the commission or the executive director must be subject to appeal or review within 30 days after entry of the order granting or denying the conversion. Removes reference to, "of the commission".
- (d) Requires that a copy of the order converting to a district must be filed in the deed records of the county or counties in which the district is located.

SECTION 11. Repeals Sections 49.322 and 54.031, water code.

SECTION 12. Makes provisions of this Act prospective.

SECTION 13. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 635 authorizes the commission by rule to allow a municipality or utility or water supply corporation to render sewer service, in addition to retail water service, without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 that it intends to provide such service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility, whereas the original does not contain such a provision.

C.S.S.B. 635 establishes that contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity when approved by the executive director, as an alternative to the commission, after public notice, whereas the original does not contain such a provision. C.S.S.B. 635 removes a requirement that such validation, enforcement, and incorporation be after a public hearing, whereas the original does not contain such a provision.

C.S.S.B. 635 authorizes the executive director, in addition to the commission, and after notice, to dissolve any water district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness, whereas the original does not contain such a provision.

C.S.S.B. 635 authorizes the commission or executive director to enter an order dissolving a district if the commission or executive director finds that the district has performed none of the functions for which it was created for a period of five consecutive years and that the district has no outstanding bonded indebtedness, whereas the original does not contain such a provision.

C.S.S.B. 635 allows for appeals from an order dissolving a district to be filed and heard in district court of any of the counties in which the land is located, whereas the original does not contain such a provision.

C.S.S.B. 635 provides for a governing body of a district the ability to convert into a district operating under this chapter and Article XVI, Section 59, Texas Constitution by entering into the minutes of the governing body a resolution that in its judgment the conversion would serve the best interest of the district and benefit to the land and property included in the district. The substitute requires the resolution to request that the commission approve the conversion of the district, whereas the original does not contain such a provision.

C.S.S.B. 635 strikes the reference hearing, to read that notice of a conversion shall be given by publishing notice as stipulated, language to make the section read the notice shall be published once a week for two consecutive weeks and to specify the notice is required to set out the adopted resolution in full and notify all interested persons how they may offer comments for or against the proposal contained in the resolution, whereas the original does not contain such a provision.

C.S.S.B. 635 adds the executive director as an alternative to the commission, for the purposes of provisions requiring an order to be entered relating to the conversion of a municipal utility district if the commission or the executive director find that such conversion would serve the best interest of the district and would be a benefit to the land and property included in the district. If the commission or the executive director determine the conversion of the district is not in the best interest of the district, either the commission or the executive director is required to order against the conversion. The commission or the executive director's findings shall be subject to appeal or review as stipulated. The substitute requires a copy of the order converting the district to be filed as stipulated. The original does not contain such provisions.

C.S.S.B. 635 repeals Sections 49.322 and 54.031 of the Water Code in Section 11, whereas the original did not repeal these sections.