

By: Miller of Comal

H.B. No. 2399

A BILL TO BE ENTITLED

1 AN ACT

2 relating to allowing a water and sewer utility to assess a utility
3 facilities construction and improvement charge to recover certain
4 costs associated with certain construction and improvement
5 projects.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subchapter F, Chapter 13, Water Code, is amended
8 by adding Section 13.193 to read as follows:

9 Sec. 13.193. UTILITY FACILITIES CONSTRUCTION AND
10 IMPROVEMENT CHARGE. (a) Notwithstanding any other provision of
11 this chapter, a utility may assess a utility facilities
12 construction and improvement charge to recover the depreciation and
13 return on investment of a utility facilities construction and
14 improvement project that:

15 (1) is completed and placed into service between two
16 consecutive statements of intent to change the utility's rates or
17 tariff filed under Section 13.187; and

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

20 (A) the production, transmission, storage,
21 distribution, or provision of potable or recycled water to the
22 public; or

23 (B) the collection, transportation, treatment,
24 or disposal of sewage.

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

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

6 (2) to receive the executive director's approval of
7 the tariff.

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

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

15 (A) the amount of the proposed charge or increase
16 of a charge;

17 (B) the proposed implementation date for the
18 charge or increase of a charge;

19 (C) a list of completed, eligible capital
20 projects, and related depreciation and return on investment for
21 which the utility seeks reimbursement through the charge or
22 increase of a charge; and

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

25 (2) the total amount the utility is authorized to
26 recover annually through a charge assessed under this section and
27 the amount the utility actually recovers are subject to annual

1 audit by the executive director;

2 (3) the amount of the charge the utility requests
3 authorization to assess is based on the amount necessary to ensure
4 that the charge yields a rate of return on invested capital that is
5 equal to:

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

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

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

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

17 (6) the charge is applied to each customer included in
18 the tariff;

19 (7) the utility provides to each customer written
20 notice of the charge on the initial tariff filing that proposes to
21 implement the charge; and

22 (8) the charge is subject to a true-up or
23 reconciliation at the utility's next rate case filed under Section
24 13.187.

25 (d) Notwithstanding any other provision of this code, the
26 implementation of a utility facilities construction and
27 improvement charge or an increase in a utility facilities

1 construction and improvement charge is not subject to a contested
2 case hearing under Chapter 2001, Government Code.

3 (e) This section does not apply to a utility that has in
4 place a negotiated stay-out agreement on September 1, 2011.

5 SECTION 2. The changes in law made by Section 13.193, Water
6 Code, as added by this Act, apply only to a project that is
7 completed and placed into service on or after the effective date of
8 this Act. A project that is completed and placed into service before
9 the effective date of this Act is subject to the law in effect at
10 that time, and that law is continued in effect for that purpose.

11 SECTION 3. The Texas Commission on Environmental Quality
12 shall adopt rules consistent with Section 13.193, Water Code, as
13 added by this Act, not later than December 1, 2011.

14 SECTION 4. This Act takes effect September 1, 2011.