

By: Miller of Comal

H.B. No. 2400

Substitute the following for H.B. No. 2400:

By: Martinez Fischer

C.S.H.B. No. 2400

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Commission on Environmental Quality and other entities regarding water and sewer utilities and certain conservation and reclamation districts.

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

SECTION 1. Section 13.002(22), Water Code, is amended to read as follows:

(22) "Test year" means the annualized period for which costs are to be analyzed and rates established ~~[most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing]~~.

SECTION 2. Section 13.145(a), Water Code, is amended to read as follows:

(a) A utility may consolidate more than one system under a single tariff on a regional basis ~~[only]~~ if ~~+~~

~~[(1) the systems under the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and~~

~~[(2)]~~ the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

SECTION 3. Section 13.185(d), Water Code, is amended to

1 read as follows:

2 (d) Net income is the total revenues of the utility less all
3 reasonable and necessary expenses as determined by the regulatory
4 authority. The regulatory authority shall base a utility's
5 expenses on information for either, at the utility's choice, a
6 historic test year that is the most recent 12-month period that
7 ended less than 12 months before the filing date of the rate
8 application or the future test year of the 12-month period ending on
9 the first anniversary of the filing date of the rate application for
10 which representative and supporting information for the utility is
11 available. The regulatory authority shall determine expenses and
12 revenues in a manner consistent with Subsections (e) through (h) of
13 this section.

14 SECTION 4. Sections 13.187(a), (b), (d), (e), (f), (k),
15 (o), and (p), Water Code, are amended to read as follows:

16 (a) A utility may not make changes in its rates except by
17 delivering a statement of intent to each ratepayer and ~~[with]~~ the
18 regulatory authority having original jurisdiction at least 90 ~~[60]~~
19 days before the proposed effective date of the proposed change. The
20 proposed effective date of the new rates must be the first day of a
21 billing period, and the new rates may not apply to service received
22 before the proposed effective date of the new rates. The statement
23 of intent must include:

24 (1) the utility's name, address, current rates, and
25 proposed rates ~~[information required by the regulatory authority's~~
26 ~~rules]~~;

27 (2) a billing comparison regarding the existing water

1 or sewer rate and the new water or sewer rate computed that shows
2 the monthly water charges generated for use of the following
3 amounts of water and the monthly sewer charges generated if the
4 amount used was the same as a customer's winter monthly average,
5 unless the utility proposes a flat rate for sewer service, for the
6 use of:

7 (A) 5,000 [~~10,000~~] gallons of water or sewer;
8 [~~and~~]

9 (B) 10,000 [~~30,000~~] gallons of water or sewer;
10 [~~and~~]

11 (C) 15,000 gallons of water or sewer; and

12 (D) 30,000 gallons of water or sewer;

13 (3) the effective date of the proposed rates;

14 (4) information on the procedure for protesting a rate
15 change, the minimum number of protests needed to ensure a hearing,
16 and the length of the protest period;

17 (5) contact information for the commission and the
18 office of public interest counsel;

19 (6) a brief description of the contested case hearing
20 process; and

21 (7) any additional information required by the
22 regulatory authority's rules [~~a billing comparison regarding the~~
23 ~~existing sewer rate and the new sewer rate computed for the use of~~
24 ~~10,000 gallons, unless the utility proposes a flat rate for sewer~~
25 ~~services].~~

26 (b) A copy of the statement of intent shall be mailed or
27 delivered to the appropriate offices of each affected municipality,

1 to the executive director, and to any ~~[other]~~ affected persons as
2 required by the regulatory authority's rules.

3 (d) If ~~[Except as provided by Subsection (d-1), if]~~ the
4 application or the statement of intent is not substantially
5 complete or does not comply with the regulatory authority's rules,
6 it may be rejected and the proposed effective date of the rate
7 change may be suspended until a properly completed application is
8 accepted by the regulatory authority and a proper statement of
9 intent is provided. The commission may also suspend the proposed
10 effective date of any rate change if the utility does not have a
11 certificate of public convenience and necessity or a completed
12 application for a certificate or to transfer a certificate pending
13 before the commission or if the utility is delinquent in paying the
14 assessment and any applicable penalties or interest required by
15 Section 5.701(n) of this code.

16 (e) The regulatory authority shall hold a hearing on the
17 proposed rate increase if ~~[If]~~, before the 61st ~~[91st]~~ day after the
18 ~~[effective]~~ date the statement of intent was provided to the
19 authority and each ratepayer under Subsection (a) ~~[of the rate~~
20 ~~change]~~, the regulatory authority receives a complaint from any
21 affected municipality, or from the lesser of 1,000 or 10 percent of
22 the ratepayers of the utility over whose rates the regulatory
23 authority has original jurisdiction~~[, the regulatory authority~~
24 ~~shall set the matter for hearing]~~.

25 (f) The regulatory authority may set the matter for hearing
26 on its own motion at any time within 90 ~~[120]~~ days after the
27 ~~[effective]~~ date the statement of intent was provided to the

1 authority and each ratepayer under Subsection (a) ~~[of the rate~~
 2 ~~change]~~. If more than half of the ratepayers of the utility receive
 3 service in a county with a population of more than 2.5 million, the
 4 hearing must be held at a location in that county.

5 (k) If the regulatory authority sets the matter for
 6 ~~[receives at least the number of complaints from ratepayers~~
 7 ~~required for the regulatory authority to set]~~ a hearing under
 8 Subsection (e), the regulatory authority shall ~~[may]~~, pending the
 9 hearing and a decision, suspend the date the rate change would
 10 otherwise be effective until the date the regulatory authority
 11 issues a final decision on the matter. The administrative law judge
 12 shall issue a proposal for decision not later than the 120th day
 13 after the last date of the preliminary hearing. The commission
 14 shall issue a final decision not later than the 60th day after the
 15 date the administrative law judge issues the proposal for decision.
 16 The executive director may extend the process if the commission
 17 determines that an extension is necessary to protect a party's
 18 right to due process or other constitutional right. ~~[Except as~~
 19 ~~provided by Subsection (d-1), the proposed rate may not be~~
 20 ~~suspended for longer than:~~

21 ~~[(1) 90 days by a local regulatory authority, or~~

22 ~~[(2) 150 days by the commission.]~~

23 (o) If the ~~[a]~~ regulatory authority does not set a hearing
 24 on the proposed rate increase under Subsection (e) or (f), ~~[other~~
 25 ~~than the commission establishes interim rates or an escrow account,~~
 26 ~~the regulatory authority must make a final determination on the~~
 27 ~~rates not later than the first anniversary of the effective date of~~

1 ~~the interim rates or escrowed rates or]~~ the rates are automatically
2 approved as requested by the utility.

3 (p) Except to implement a rate adjustment provision
4 approved by the regulatory authority by rule or ordinance, as
5 applicable, or to adjust the rates of a newly acquired utility
6 system, a utility or two or more utilities under common control and
7 ownership may not file a statement of intent to increase its rates
8 for the same customer more than once in a 12-month period, unless
9 the regulatory authority determines that a financial hardship
10 exists. If the regulatory authority requires the utility to
11 deliver a corrected statement of intent, the utility is not
12 considered to be in violation of the 12-month filing requirement.

13 SECTION 5. Subchapter F, Chapter 13, Water Code, is amended
14 by adding Section 13.193 to read as follows:

15 Sec. 13.193. UTILITY FACILITIES CONSTRUCTION AND
16 IMPROVEMENT CHARGE. (a) Notwithstanding any other provision of
17 this chapter, a utility may assess a utility facilities
18 construction and improvement charge to recover the depreciation and
19 return on investment of a utility facilities construction and
20 improvement project that:

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

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

26 (A) the production, transmission, storage,
27 distribution, or provision of potable or recycled water to the

1 public; or

2 (B) the collection, transportation, treatment,
3 or disposal of sewage.

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

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

9 (2) to receive the executive director's approval of
10 the tariff.

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

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

18 (A) the amount of the proposed charge or increase
19 of a charge;

20 (B) the proposed implementation date for the
21 charge or increase of a charge;

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

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

1 (2) the total amount the utility is authorized to
2 recover annually through a charge assessed under this section and
3 the amount the utility actually recovers are subject to annual
4 audit by the executive director;

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

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

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

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

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

20 (6) the charge is applied to each customer included in
21 the tariff;

22 (7) the utility provides to each customer written
23 notice of the charge on the initial tariff filing that proposes to
24 implement the charge; and

25 (8) the charge is subject to a true-up or
26 reconciliation at the utility's next rate case filed under Section
27 13.187.

1 (d) Notwithstanding any other provision of this code, the
2 implementation of a utility facilities construction and
3 improvement charge or an increase in a utility facilities
4 construction and improvement charge is not subject to a contested
5 case hearing under Chapter 2001, Government Code.

6 (e) A utility may not collect the charge after the first
7 anniversary of the completion of a utility facilities construction
8 and improvement project.

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

11 SECTION 6. Section 13.242(c), Water Code, is amended to
12 read as follows:

13 (c) The commission may by rule allow a municipality or
14 utility or water supply corporation to render retail water or sewer
15 service without a certificate of public convenience and necessity
16 if the municipality has given notice under Section 13.255 [~~of this~~
17 ~~code~~] that it intends to provide retail water or sewer service to an
18 area or if the utility or water supply corporation has less than 15
19 potential connections and is not within the certificated area of
20 another retail public utility.

21 SECTION 7. Section 13.248, Water Code, is amended to read as
22 follows:

23 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts
24 between retail public utilities designating areas to be served and
25 customers to be served by those retail public utilities, when
26 approved by the commission or the executive director after public
27 notice [~~and hearing~~], are valid and enforceable and are

1 incorporated into the appropriate areas of public convenience and
2 necessity.

3 SECTION 8. Section 49.321, Water Code, is amended to read as
4 follows:

5 Sec. 49.321. DISSOLUTION AUTHORITY. After notice [~~and~~
6 ~~hearing~~], the commission or executive director may dissolve any
7 district that is inactive for a period of five consecutive years and
8 has no outstanding bonded indebtedness.

9 SECTION 9. Section 49.324, Water Code, is amended to read as
10 follows:

11 Sec. 49.324. ORDER OF DISSOLUTION. The commission or the
12 executive director may enter an order dissolving the district [~~at~~
13 ~~the conclusion of the hearing~~] if the commission or executive
14 director [~~it~~] finds that the district has performed none of the
15 functions for which it was created for a period of five consecutive
16 years [~~before the day of the proceeding~~] and that the district has
17 no outstanding bonded indebtedness.

18 SECTION 10. Section 49.326(a), Water Code, is amended to
19 read as follows:

20 (a) Appeals from an [~~a commission~~] order dissolving a
21 district shall be filed and heard in the district court of any of
22 the counties in which the land is located.

23 SECTION 11. Section 54.030(b), Water Code, is amended to
24 read as follows:

25 (b) The governing body of a district which desires to
26 convert into a district operating under this chapter shall adopt
27 and enter in the minutes of the governing body a resolution

1 declaring that in its judgment, conversion into a municipal utility
2 district operating under this chapter and under Article XVI,
3 Section 59, of the Texas Constitution, would serve the best
4 interest of the district and would be a benefit to the land and
5 property included in the district. The resolution shall also
6 request that the commission approve ~~[to hold a hearing on the~~
7 ~~question of]~~ the conversion of the district.

8 SECTION 12. Section 54.032, Water Code, is amended to read
9 as follows:

10 Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice
11 of the conversion ~~[hearing]~~ shall be given by publishing notice in a
12 newspaper with general circulation in the county or counties in
13 which the district is located.

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

17 (c) The notice shall:

18 (1) ~~[state the time and place of the hearing,~~
19 ~~(2)]~~ set out the resolution adopted by the district
20 in full; and

21 (2) ~~(3)]~~ notify all interested persons how they may
22 offer comments ~~[to appear and offer testimony]~~ for or against the
23 proposal contained in the resolution.

24 SECTION 13. Section 54.033, Water Code, is amended to read
25 as follows:

26 Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) If
27 ~~[After a hearing, if]~~ the commission or the executive director

1 finds that conversion of the district into one operating under this
2 chapter would serve the best interest of the district and would be a
3 benefit to the land and property included in the district, the
4 commission or executive director ~~[it]~~ shall enter an order making
5 this finding and the district shall become a district operating
6 under this chapter and no confirmation election shall be required.

7 (b) If the commission or the executive director finds that
8 the conversion of the district would not serve the best interest of
9 the district and would not be a benefit to the land and property
10 included in the district, the commission or executive director ~~[it]~~
11 shall enter an order against conversion of the district into one
12 operating under this chapter.

13 (c) The findings of the commission or the executive director
14 entered under this section shall be subject to appeal or review
15 within 30 days after entry of the order ~~[of the commission]~~ granting
16 or denying the conversion.

17 (d) A copy of the ~~[commission]~~ order converting a district
18 shall be filed in the deed records of the county or counties in
19 which the district is located.

20 SECTION 14. The following are repealed:

21 (1) Sections 13.187(d-1), (i), (j), (l), (m), and (n),
22 Water Code; and

23 (2) Sections 49.322 and 54.031, Water Code.

24 SECTION 15. Except as otherwise provided by this Act, this
25 Act applies only to a statement of intent filed on or after the
26 effective date of this Act. A rate change to which a statement of
27 intent filed before the effective date of this Act applies is

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1 governed by the law in effect on the date the statement was filed,
2 and that law is continued in effect for that purpose.

3 SECTION 16. This Act takes effect September 1, 2011.