LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 3, 2011

TO: Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

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

IN RE: **HB2694** by Smith, Wayne (Relating to the continuation and functions of the Texas Commission on Environmental Quality and abolishing the On-site Wastewater Treatment Research Council.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2694, As Engrossed: a positive impact of $2,034,000 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	$991,000
2013	$1,043,000
2014	$1,045,000
2015	$1,049,000
2016	$1,051,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *General Revenue Fund* 1	Probable Savings/ (Cost) from *General Revenue Fund* 1	Probable Revenue Gain/(Loss) from *Water Resource Management* 153	Probable Savings/ (Cost) from *Water Resource Management* 153
2012	$1,592,256	($601,256)	($631,259)	$601,256
2013	$1,644,256	($601,256)	$1,022,880	$601,256
2014	$1,646,256	($601,256)	$1,022,880	$601,256
2015	$1,650,256	($601,256)	$1,022,880	$601,256
2016	$1,652,256	($601,256)	$1,022,880	$601,256

Fiscal Year	Probable Revenue Gain/(Loss) from *Petro Sto Tank Remed Acct* 655	Probable Savings/ (Cost) from *Low-level Waste Acct* 88	Probable Revenue Gain/(Loss) from *New General Revenue Dedicated--Low Level Compact*	Probable Savings/ (Cost) from *New General Revenue Dedicated--Low-Level Compact*
2012	$21,124,000	$100,000	$583,298	($583,298)
2013	$23,663,000	$100,000	$583,298	($583,298)
2014	$23,807,000	$100,000	$583,298	($583,298)
2015	$23,937,000	$100,000	$583,298	($583,298)
2016	$24,080,000	$100,000	$583,298	($583,298)

Fiscal Year	Probable Savings/ (Cost) from *Water Districts and Water Supply Corporations*
2012	($1,654,056)
2013	($1,654,056)
2014	($1,654,056)
2015	($1,654,056)
2016	($1,654,056)

Fiscal Analysis

The Texas Commission on Environmental Quality (TCEQ) and the Texas On-site Wastewater Treatment Research Council are subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue the TCEQ until 2023, and it contains various provisions to implement Sunset recommendations. Only those changes that have a fiscal impact are included in this analysis.

The bill would make various changes to the TCEQ's procedures for using compliance history in making decisions and levying penalties. The bill would exempt all dams that impound 1,000 acre-feet or less from complying with requirements relating to dam safety.

The bill would transfer the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission. The transfer of authority would include disposal wells used for injecting oil and gas waste and permits for geologic storage of anthropogenic carbon dioxide. The Railroad Commission would also be authorized to assess expedited surface casing fees and fees for non-expedited recommendations to cover costs of the groundwater protection recommendation program and to pay for the digitization of well maps.

The bill would increase the TCEQ's administrative penalty caps for 20 categories of violations to match civil penalty caps already in law. It would establish a maximum penalty of $5,000 for violations involving Occupational Licensing, On-Site Sewage Disposal, Used Oil, Performance Standards for Plumbing Fixtures, and public water utilities. It would also establish a maximum penalty of $25,000 for all other violations within the jurisdiction of the commission that do not have penalty minimums and maximums already carved out elsewhere in statute.

The bill would prohibit the delivery of certain petroleum products to uncertified tanks and authorize TCEQ to assess administrative penalties for violations. Further, the bill would expand the use of the petroleum storage tank (PST) remediation fee to allow TCEQ to remove non-compliant petroleum storage tanks that pose a contamination risk, that are out of service, and are owned or operated by a person who is financially unable to remediate the tank, and it would reauthorize the PST remediation fee which is set to expire on August 31, 2011 at 80 to 83 percent of the current fee rate, depending on the size of the delivery. The bill would change the current PST fee levels from statutorily set rates to caps and authorizes the TCEQ to set the fees in rule. Fee rates would be set in an amount not to exceed the amount necessary to cover the cost of the program, as appropriated to the agency by the Legislature.

The bill would adjust the Water Utility Regulatory Assessment Fee, which is deposited to the credit of the General Revenue-Dedicated Water Resource Management Account No. 153, to be 1 percent for water supply corporations, as opposed to the current rate of 0.5 percent; however, districts would continue to pay the current 0.5 percent rate. This provision would apply to fees assessed on or after January 1, 2012. The bill would also eliminate three existing water and wastewater utility application fees relating to applications for rate changes, Certificates of Convenience and Necessity (CCN), and the sale, transfer, or merger of a CCN. The bill also would allow appropriations to be made out of the Water Resource Management Account No. 153 to be made by rider in the General Appropriations Act to an agency with duties related to water and sewer utility regulation.

The bill would define aquaculture as an agricultural use instead of an industrial use, as under current law.

The bill also would clarify the Texas Low-Level Radioactive Waste Disposal Compact Commission’s (LLRWDCC) funding mechanism, by providing that the portion of the compact waste disposal fee allocated to the Compact Commission be deposited in a new General Revenue-Dedicated LLRWDCC Account created by the bill, which could only be appropriated to support the operations of the Compact Commission.

The bill would remove the Certificate of Convenience and Necessity (CCN) and rate change application fees from the list of fees that are deposited to the General Revenue-Dedicated Water Resource Management Account No. 153. It would also direct proceeds of the Texas Onsite Waste Water Treatment Council fee to the Water Resource Management Account No. 153, which are currently deposited to the credit of the General Revenue Fund.

The bill would abolish the Texas On-site Wastewater Treatment Research Council, transfer authority to award grants for on-site sewage research to TCEQ, and require TCEQ to seek input from stakeholder experts when choosing research topics, awarding grants, and holding the conference.

The bill would take effect on September 1, 2011.

Methodology

The bill's provisions relating to compliance history and administrative penalty caps are not expected to result in significant fiscal impacts. Although the bill's provisions exempting dams with a maximum storage capacity of 1,000 acre feet would remove a significant number of dams from the agency's jurisdiction, this estimate does not assume that this would result in any savings to the agency because the agency would inspect remaining dams more frequently upon passage of the bill.

The bill's provisions relating to the transfer of authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission would not have a net fiscal impact on the state, but it would result in a transfer of funds and FTEs from TCEQ to the Railroad Commission. It is estimated that 9.0 FTEs and $931,256 in annual costs out of the Water Resource Management Account No. 153 would transfer from TCEQ to the Railroad Commission. Because the bill would allow for the Railroad Commission to collect fees similar to those assessed currently by the TCEQ to operate the groundwater protection recommendation program, but it does not specify where such fees would be deposited, this estimate assumes that fee revenues from expedited surface casing recommendation letters currently collected by the TCEQ and deposited to the Water Resource Management Account No. 153 would be collected instead by the Railroad Commission and deposited to the General Revenue Fund. This estimate assumes such fees would be appropriated to the Railroad Commission. The additional fees and costs to General Revenue are shown in the table above.

The bill's provisions relating to compliance history would require the TCEQ to make programming changes and updates to the agency's database. This estimate assumes that those costs would be absorbed using existing agency resources. The bill's provisions increasing per violation and per day administrative penalty caps for 20 categories of violations could result in an increase in penalty revenues deposited to the General Revenue Fund. However, this estimate assumes that the amount of additional revenue would not be significant.

The bill's provisions prohibiting the delivery of certain petroleum products to uncertified petroleum storage tanks is expected to result in an estimated gain to the General Revenue Fund of $560,000 annually. This estimate is based on TCEQ's past experience when the prohibition was in law prior to 2005 and the identified violations of the prohibition. TCEQ reports having collected $2.8 million in penalties from 2001-2005, the last five years the delivery prohibition was in place. The agency expects to collect a similar amount over the 2012-2016 period, and this estimate assumes the annual revenue stream would be equal to one-fifth of the $2.8 million or $560,000 per fiscal year.

The bill's provisions extending the petroleum products delivery fee would have a positive fiscal impact to the General Revenue-Dedicated PST Remediation Account No. 655 of about $24 million per fiscal year. Also included is a 2 percent service charge to the Comptroller that is estimated to generate approximately $0.4 million in fiscal year 2012 and $0.5 million per fiscal year in future years. This estimate assumes that the TCEQ would set the petroleum products delivery fee at maximum rate authorized by the bill. It should be noted that the Legislature were to appropriate less than the amounts shown in the table above, plus related benefits, the revenue generated by the fee could be less. The revenue amount shown in the table above for fiscal year 2012 is only $21,124,000 because it reflects the additional amount that would be collected above the $2,469,000 already included in the Comptroller's Biennial Revenue Estimate for 2012-13.

Although some aquaculture facilities could become exempt from the annual Water Quality fee assessed by the TCEQ because of their designation as an agricultural, this provision is not expected to have a significant impact on revenue because the TCEQ reports that such entities are already exempted from the annual fee because they obtain wastewater permits.

The bill's provisions relating to the LLRWCC would result in revenues to the newly created Low-Level Waste Disposal Compact Commission Account in an amount sufficient to fund the operations of the LLRWCC. Based on the TCEQ's Legislative Appropriations Request for the LLRWCC, those costs are estimated at $583,298 per fiscal year. This estimate assumes that the Legislature would appropriate that amount to the agency. Because the TCEQ provides $100,000 per fiscal year in funding out of the General Revenue-Dedicated Low-Level Waste Account No. 88, a savings equal to that amount is also shown in the table above.

The proposed adjustment of the Water Utility Regulatory Assessment fee rate imposing the 1.0 percent rate on water supply corporations is expected to result in a gain of $1,654,056 per fiscal year to the General Revenue-Dedicated Water Resources Management Account No. 153 beginning in fiscal year 2013. This estimate is based on amounts paid by the water supply corporations that currently pay 0.5 percent. Actual collections from these entities totaled $1.7 million in calendar year 2009, so collecting an additional 0.5 percent on these entities is expected to yield an additional $1.7 million per fiscal year. This estimate assumes that the revenue gain would not occur until fiscal year 2013 because the TCEQ only assesses the fee once per fiscal year in January, and the assessment is made against the previous year. Because the bill would not apply to assessments on or before January 1, 2012, this estimate assumes that during January 2012, the agency would be billing entities for 2011 at the current assessment rate.

Because the bill would allow the Public Utility Commission (PUC) to receive funds from the Water Resource Management Account No. 153 for the regulation of water and wastewater utilities through a rider in the General Appropriations Act, if additional legislation were to pass, such as Senate Bill 661, transferring the regulation of water and wastewater utilities from TCEQ to PUC, then appropriations out the Water Resources Management Account No. 153 could be transferred by rider from the TCEQ to the PUC.

The elimination of three existing water and wastewater utility application fees (Rate Change Application Fees; CCN fees; and Sale, Transfer or Merger of a CCN fee), is expected to result in a loss of $30,000 to the Water Resource Management Account No. 153 each fiscal year, which is included as an offset to the revenue gain shown in the table above.

Abolishment of the On-Site Wastewater Treatment Research Council and the transfer of its authority to award grants for on-site sewage research to TCEQ would result in the $330,000 in each fiscal year that is provided the Council in the 2010-11 biennium being transferred to TCEQ for the same purposes. The bill's provision for the fee collected to fund the on-site wastewater treatment grant program to be deposited into TCEQ’s Water Resource Management Account No. 153, instead of to the General Revenue Fund, as it is currently, would result in a loss to General Revenue Fund of $330,000 per fiscal year and an equal gain to the Water Resource Management Account No. 153. Costs to the General Revenue Fund would be reduced and costs to the Water Resource Management Account No. 153 would increase in an equal amount.

Local Government Impact

Local governments operating a water supply corporation would experience an increase in fee payments for the adjustment of the Water Utility Regulatory Assessment fee proposed by the bill. The additional cost to local governments statewide would be $1.7 million per fiscal year beginning in fiscal year 2013. The cost to each local government would depend on the size of the size of the utility. This estimate assumes that such costs would be passed along to retail customers. The TCEQ estimates that this increase would range from $0.50 to $1.18 per customer per year.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: JOB, SZ, ZS, TL, SD