

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Smith of Harris

H.B. No. 2694

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Commission on Environmental Quality and abolishing the On-site Wastewater Treatment Research Council.

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

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. The heading to Chapter 5, Water Code, is amended to read as follows:

CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON ENVIRONMENTAL QUALITY

SECTION 1.02. Section 5.014, Water Code, is amended to read as follows:

Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2023 [~~2011~~].

SECTION 1.03. Subchapter C, Chapter 5, Water Code, is amended by adding Section 5.061 to read as follows:

Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN CONTRIBUTIONS. A member of the commission may not accept a contribution to a campaign for election to an elected office. If a member of the commission accepts a campaign contribution, the person is considered to have resigned from the office and the office

1 immediately becomes vacant. The vacancy shall be filled in the  
2 manner provided by law.

3 SECTION 1.04. Subchapter D, Chapter 5, Water Code, is  
4 amended by adding Section 5.1031 to read as follows:

5 Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE  
6 RESOLUTION. (a) The commission shall develop and implement a  
7 policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter  
9 2008, Government Code, for the adoption of commission rules; and

10 (2) appropriate alternative dispute resolution  
11 procedures under Chapter 2009, Government Code, to assist in the  
12 resolution of internal and external disputes under the commission's  
13 jurisdiction.

14 (b) The commission's procedures relating to alternative  
15 dispute resolution must conform, to the extent possible, to any  
16 model guidelines issued by the State Office of Administrative  
17 Hearings for the use of alternative dispute resolution by state  
18 agencies.

19 (c) The commission shall:

20 (1) coordinate the implementation of the policy  
21 adopted under Subsection (a);

22 (2) provide training as needed to implement the  
23 procedures for negotiated rulemaking or alternative dispute  
24 resolution; and

25 (3) collect data concerning the effectiveness of those  
26 procedures.

27 SECTION 1.05. Section 5.2291(b), Water Code, is amended to

1 read as follows:

2 (b) Except as provided by Section 5.2292, the [The]  
3 procurement of a contract for scientific and technical  
4 environmental services shall be conducted under the procedures for  
5 professional services selection provided in Subchapter A, Chapter  
6 2254, Government Code.

7 SECTION 1.06. Subchapter F, Chapter 5, Water Code, is  
8 amended by adding Section 5.2292 to read as follows:

9 Sec. 5.2292. CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE  
10 TANK STATE-LEAD PROGRAM. (a) The executive director may directly  
11 award a contract for scientific and technical environmental  
12 services to a person if:

13 (1) the contract is for the performance of services  
14 related to the remediation of a site that has been placed in the  
15 state-lead program under Section 26.3573(r-1);

16 (2) the person has registered to perform corrective  
17 action under Section 26.364;

18 (3) the person is eligible to receive a contract award  
19 from the state;

20 (4) the person was performing related work at the site  
21 on or before July 1, 2011; and

22 (5) the contract includes all contract provisions  
23 required for state contracts.

24 (b) Notwithstanding Section 2254.004, Government Code, the  
25 executive director may directly award a contract for engineering  
26 services to a person if:

27 (1) the contract is for the performance of services

1 related to the remediation of a site that has been placed in the  
2 state-lead program under Section 26.3573(r-1);

3 (2) the person is licensed under Chapter 1001,  
4 Occupations Code;

5 (3) the person has registered to perform corrective  
6 action under Section 26.364;

7 (4) the person is eligible to receive a contract award  
8 from the state;

9 (5) the person was performing related work at the site  
10 on or before July 1, 2011; and

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

13 (c) Nothing in Subsection (a) or (b) requires the executive  
14 director to make an award at a site or prevents the executive  
15 director from negotiating additional contract terms, including  
16 qualifications.

17 SECTION 1.07. Section 12.052, Water Code, is amended by  
18 amending Subsection (a) and adding Subsections (b-1) and (e-1) to  
19 read as follows:

20 (a) The commission shall make and enforce rules and orders  
21 and shall perform all other acts necessary to provide for the safe  
22 construction, maintenance, repair, and removal of dams located in  
23 this state. In performing the commission's duties under this  
24 subsection, the commission shall identify and focus on the most  
25 hazardous dams in the state.

26 (b-1) The commission may enter into an agreement with an  
27 owner of a dam who is required to reevaluate the adequacy of an

1 existing dam or spillway. The agreement may include timelines to  
2 achieve compliance with the commission's design criteria and may  
3 authorize deferral of compliance with the criteria, as appropriate.

4 (e-1) The commission shall exempt dams that impound 1,000  
5 acre-feet or less from meeting requirements related to dam safety.

6 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

7 SECTION 2.01. Section 91.011, Natural Resources Code, is  
8 amended to read as follows:

9 Sec. 91.011. CASING. (a) Before drilling into the oil or  
10 gas bearing rock, the owner or operator of a well being drilled for  
11 oil or gas shall encase the well with good and sufficient wrought  
12 iron or steel casing or with any other material that meets standards  
13 adopted by the commission, particularly where wells could be  
14 subjected to corrosive elements or high pressures and temperatures,  
15 in a manner and to a depth that will exclude surface or fresh water  
16 from the lower part of the well from penetrating the oil or gas  
17 bearing rock, and if the well is drilled through the first into the  
18 lower oil or gas bearing rock, the well shall be cased in a manner  
19 and to a depth that will exclude fresh water above the last oil or  
20 gas bearing rock penetrated.

21 (b) The commission shall adopt rules regarding the depth of  
22 well casings necessary to meet the requirements of this section.

23 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources  
24 Code, is amended by adding Section 91.0115 to read as follows:

25 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The  
26 commission shall issue, on request from an applicant for a permit  
27 for a well to be drilled into oil or gas bearing rock, a letter of

1 determination stating the total depth of surface casing required  
2 for the well by Section 91.011.

3 (b) The commission may charge a fee in an amount to be  
4 determined by the commission for a letter of determination.

5 (c) The commission shall charge a fee not to exceed \$75, in  
6 addition to the fee required by Subsection (b), for processing a  
7 request to expedite a letter of determination. Money collected  
8 under this subsection may be used to study and evaluate electronic  
9 access to geologic data and surface casing depths under Section  
10 91.020.

11 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources  
12 Code, is amended by adding Section 91.020 to read as follows:

13 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission  
14 shall work cooperatively with other appropriate state agencies to  
15 study and evaluate electronic access to geologic data and surface  
16 casing depths necessary to protect usable groundwater in this  
17 state.

18 SECTION 2.04. Subchapter D, Chapter 91, Natural Resources  
19 Code, is amended by adding Section 91.1015 to read as follows:

20 Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The  
21 commission shall adopt rules to establish groundwater protection  
22 requirements for operations that are within the jurisdiction of the  
23 commission, including requirements relating to the depth of surface  
24 casing for wells.

25 SECTION 2.05. Section 27.033, Water Code, is amended to  
26 read as follows:

27 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~

1 ~~DIRECTOR~~]. A person making application to the railroad commission  
2 for a permit under this chapter shall submit with the application a  
3 letter of determination from the railroad commission [~~from the~~  
4 ~~executive director~~] stating that drilling and using the disposal  
5 well and injecting oil and gas waste into the subsurface stratum  
6 will not endanger the freshwater strata in that area and that the  
7 formation or stratum to be used for the disposal is not freshwater  
8 sand.

9 SECTION 2.06. Section 27.046, Water Code, is amended to  
10 read as follows:

11 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~  
12 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit  
13 under rules adopted under this subchapter until the railroad  
14 commission issues to the applicant for the permit [~~provides to the~~  
15 ~~railroad commission~~] a letter of determination [~~from the executive~~  
16 ~~director~~] stating that drilling and operating the anthropogenic  
17 carbon dioxide injection well for geologic storage or operating the  
18 geologic storage facility will not injure any freshwater strata in  
19 that area and that the formation or stratum to be used for the  
20 geologic storage facility is not freshwater sand.

21 (b) To make the determination required by Subsection (a),  
22 the railroad commission [~~executive director~~] shall review:

- 23 (1) the area of review and corrective action plans;  
24 (2) any subsurface monitoring plans required during  
25 injection or post injection;  
26 (3) any postinjection site care plans; and  
27 (4) any other elements of the application reasonably

1 required in order for the railroad commission [~~executive director~~]  
2 to make the determination required by Subsection (a).

3 (c) The railroad commission shall adopt rules to implement  
4 and administer this section.

5 SECTION 2.07. Section 5.701(r), Water Code, is repealed.

6 SECTION 2.08. (a) The Railroad Commission of Texas shall  
7 adopt rules to implement the changes in law made by this article not  
8 later than March 1, 2012.

9 (b) A rule, form, policy, or procedure of the Texas  
10 Commission on Environmental Quality related to the changes in law  
11 made by this article continues in effect as a rule, form, policy, or  
12 procedure of the Railroad Commission of Texas and remains in effect  
13 until amended or replaced by that agency.

14 ARTICLE 3. PUBLIC INTEREST

15 SECTION 3.01. Subchapter F, Chapter 5, Water Code, is  
16 amended by adding Section 5.239 to read as follows:

17 Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The  
18 executive director shall ensure that the agency is responsive to  
19 environmental and citizens' concerns, including environmental  
20 quality and consumer protection.

21 (b) The executive director shall develop and implement a  
22 program to:

23 (1) provide a centralized point for the public to  
24 access information about the commission and to learn about matters  
25 regulated by the commission;

26 (2) identify and assess the concerns of the public in  
27 regard to matters regulated by the commission; and



1           (3) respond to the concerns identified by the program.

2           SECTION 3.02. Section 5.271, Water Code, is amended to read  
3 as follows:

4           Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE  
5 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest  
6 counsel is created to ensure that the commission promotes the  
7 public's interest [~~and is responsive to environmental and citizens'~~  
8 ~~concerns including environmental quality and consumer protection~~].  
9 The primary duty of the office is to represent the public interest  
10 as a party to matters before the commission.

11           SECTION 3.03. Subchapter G, Chapter 5, Water Code, is  
12 amended by adding Section 5.2725 to read as follows:

13           Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The  
14 office of public interest counsel shall report to the commission  
15 each year in a public meeting held on a date determined by the  
16 commission to be timely for the commission to include the reported  
17 information in the commission's reports under Sections 5.178(a) and  
18 (b) and in the commission's biennial legislative appropriations  
19 requests as appropriate:

20           (1) an evaluation of the office's performance in  
21 representing the public interest in the preceding year;

22           (2) an assessment of the budget needs of the office,  
23 including the need to contract for outside expertise; and

24           (3) any legislative or regulatory changes recommended  
25 under Section 5.273.

26           (b) The commission and the office of public interest counsel  
27 shall work cooperatively to identify performance measures for the

1 office.

2 SECTION 3.04. Subchapter G, Chapter 5, Water Code, is  
3 amended by adding Section 5.276 to read as follows:

4 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

5 (a) The commission by rule, after consideration of recommendations  
6 from the office of public interest counsel, shall establish factors  
7 the public interest counsel must consider before the public  
8 interest counsel decides to represent the public interest as a  
9 party to a commission proceeding.

10 (b) Rules adopted under this section must include:

11 (1) factors to determine the nature and extent of the  
12 public interest; and

13 (2) factors to consider in prioritizing the workload  
14 of the office of public interest counsel.

15 ARTICLE 4. COMPLIANCE AND ENFORCEMENT

16 SECTION 4.01. Section 5.751, Water Code, is amended to read  
17 as follows:

18 Sec. 5.751. APPLICABILITY. This subchapter applies to  
19 programs under the jurisdiction of the commission under Chapters  
20 26, ~~and~~ 27, and 32 of this code and Chapters 361, 375, 382, and  
21 401, Health and Safety Code. It does not apply to occupational  
22 licensing programs under the jurisdiction of the commission.

23 SECTION 4.02. Section 5.752(1), Water Code, is amended to  
24 read as follows:

25 (1) "Applicable legal requirement" means an  
26 environmental law, regulation, permit, order, consent~~[-]~~ decree,  
27 or other requirement.

1 SECTION 4.03. The heading to Section 5.753, Water Code, is  
2 amended to read as follows:

3 Sec. 5.753. STANDARDS [~~STANDARD~~] FOR EVALUATING AND USING  
4 COMPLIANCE HISTORY.

5 SECTION 4.04. Section 5.753, Water Code, is amended by  
6 amending Subsections (a), (b), and (d) and adding Subsection (d-1)  
7 to read as follows:

8 (a) Consistent with other law and the requirements  
9 necessary to maintain federal program authorization, the  
10 commission by rule shall develop standards [~~a uniform standard~~] for  
11 evaluating and using compliance history that ensure consistency.  
12 In developing the standards, the commission may account for  
13 differences among regulated entities.

14 (b) The components of compliance history must include:

15 (1) enforcement orders, court judgments, [~~consent~~  
16 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~  
17 ~~government~~] relating to compliance with applicable legal  
18 requirements under the jurisdiction of the commission [~~or the~~  
19 ~~United States Environmental Protection Agency~~];

20 (2) notwithstanding any other provision of this code,  
21 orders issued under Section 7.070;

22 (3) to the extent readily available to the commission,  
23 enforcement orders, court judgments, consent decrees, and criminal  
24 convictions relating to violations of environmental rules [~~laws~~] of  
25 the United States Environmental Protection Agency [~~other states~~];

26 and

27 (4) changes in ownership.

1           (d) If the commission includes a notice of violation in a  
2 compliance history, the listing must be preceded by the following  
3 statement prominently displayed: "A notice of violation represents  
4 a written allegation of a violation of a specific regulatory  
5 requirement from the commission to a regulated entity. A notice of  
6 violation is not a final enforcement action nor proof that a  
7 violation has actually occurred." ~~[The set of components shall~~  
8 ~~include notices of violations.]~~ A notice of violation  
9 administratively determined to be without merit may ~~[shall]~~ not be  
10 included in a compliance history. A notice of violation that is  
11 included in a compliance history shall be removed from the  
12 compliance history if the commission subsequently determines the  
13 notice of violation to be without merit.

14           (d-1) For purposes of listing compliance history, the  
15 commission may not include as a notice of violation information  
16 received by the commission as required by Title V of the federal  
17 Clean Air Act (42 U.S.C. Section 7661 et seq.) unless the commission  
18 issues a written notice of violation. Final enforcement orders or  
19 judgments resulting from self-reported Title V deviations or  
20 violations may be considered as compliance history components for  
21 purposes of determining compliance history.

22           SECTION 4.05. Section 5.754, Water Code, is amended by  
23 amending Subsections (a), (b), (c), (d), (e), (g), and (h) and  
24 adding Subsection (e-1) to read as follows:

25           (a) The commission by rule shall establish a set of  
26 standards for the classification of a person's compliance history  
27 as a means of evaluating compliance history. The commission may

1 consider the person's classification when using compliance history  
2 under Subsection (e).

3 (b) Rules adopted under Subsection (a):

4 (1) ~~[this section]~~ must, at a minimum, provide for three  
5 classifications of compliance history in a manner adequate to  
6 distinguish among:

7 (A) unsatisfactory [~~(1) peer~~] performers, or  
8 regulated entities that in the commission's judgment perform below  
9 minimal acceptable performance standards established by the  
10 commission [~~average~~];

11 (B) satisfactory [~~(2) average~~] performers, or  
12 regulated entities that generally comply with environmental  
13 regulations; and

14 (C) [~~(3)~~] high performers, or regulated entities  
15 that have an above-satisfactory [~~above-average~~] compliance record;

16 (2) may establish a category of unclassified  
17 performers, or regulated entities for which the commission does not  
18 have adequate compliance information about the site; and

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

23 (c) In classifying a person's compliance history, the  
24 commission shall:

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

27 (2) establish criteria for classifying a repeat

1 violator, giving consideration to the size [~~number~~] and complexity  
2 of the site at which the violations occurred, and limiting  
3 consideration to violations of the same nature and the same  
4 environmental media that occurred in the preceding five years  
5 [~~facilities owned or operated by the person~~]; and

6 (3) consider:

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

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

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

14 (d) The commission by rule may require [~~shall establish~~  
15 ~~methods of assessing the compliance history of regulated entities~~  
16 ~~for which it does not have adequate compliance information. The~~  
17 ~~methods may include requiring~~] a compliance inspection to determine  
18 an entity's eligibility for participation in a program that  
19 requires a high level of compliance.

20 (e) The commission by rule shall provide for the use of  
21 compliance history [~~classifications~~] in commission decisions  
22 regarding:

23 (1) the issuance, renewal, amendment, modification,  
24 denial, suspension, or revocation of a permit;

25 (2) enforcement;

26 (3) the use of announced inspections; and

27 (4) participation in innovative programs.

1       (e-1) The amount of the penalty enhancement or escalation  
2 attributed to compliance history may not exceed 100 percent of the  
3 base penalty for an individual violation as determined by the  
4 commission's penalty policy. Notices of violation may not be used  
5 individually for penalty enhancement or escalation.

6       (g) Rules adopted under Subsection (e) for the use of  
7 compliance history shall provide for additional oversight of, and  
8 review of applications regarding, facilities owned or operated by a  
9 person whose compliance performance is classified as  
10 unsatisfactory according to commission standards [~~in the lowest~~  
11 ~~classification developed under this section~~].

12       (h) The commission by rule shall, at a minimum, prohibit a  
13 person whose compliance history is classified as unsatisfactory  
14 according to commission standards [~~in the lowest classification~~  
15 ~~developed under this section~~] from[+

16               [~~(1) receiving an announced inspection; and~~  
17               [~~(2)~~] obtaining or renewing a flexible permit under  
18 the program administered by the commission under Chapter 382,  
19 Health and Safety Code, or participating in the regulatory  
20 flexibility program administered by the commission under Section  
21 5.758.

22       SECTION 4.06. Section 5.755(b), Water Code, is amended to  
23 read as follows:

24       (b) The strategically directed regulatory structure shall  
25 offer incentives based on:

26               (1) a person's compliance history [~~classification~~];  
27 and

1           (2) any voluntary measures undertaken by the person to  
2 improve environmental quality.

3           SECTION 4.07. Section 5.756, Water Code, is amended by  
4 adding Subsection (e) to read as follows:

5           (e) Before compliance performance information about a site  
6 may be placed on the Internet under this subchapter, the  
7 information must be evaluated through a quality assurance and  
8 control procedure, including a 30-day period for the owner or  
9 operator of the site to review and comment on the information.

10          SECTION 4.08. Sections 5.758(a), (b), (d), and (h), Water  
11 Code, are amended to read as follows:

12          (a) The commission by order may exempt an applicant from a  
13 requirement of a statute or commission rule regarding the control  
14 or abatement of pollution if the applicant proposes to control or  
15 abate pollution by an alternative method or by applying an  
16 alternative standard that is:

17           (1) as ~~more~~ protective of the environment and the  
18 public health as ~~than~~ the method or standard prescribed by the  
19 statute or commission rule that would otherwise apply; and

20           (2) not inconsistent with federal law.

21          (b) The commission may not exempt an applicant under this  
22 section unless the applicant can present to the commission  
23 ~~documented~~ evidence that the alternative the applicant proposes  
24 is as protective of the environment and the public health as the  
25 method or standard prescribed by the statute or commission rule  
26 that would otherwise apply ~~[of benefits to environmental quality~~  
27 ~~that will result from the project the applicant proposes]~~.



1 (d) The commission's order must provide a [~~specific~~]  
2 description of the alternative method or standard and condition the  
3 exemption on compliance with the method or standard as the order  
4 prescribes.

5 (h) In implementing the program of regulatory flexibility  
6 authorized by this section, the commission shall:

7 (1) promote [~~market~~] the program to businesses in the  
8 state through all available appropriate media;

9 (2) endorse alternative methods that will clearly  
10 benefit the environment and impose the least onerous restrictions  
11 on business;

12 (3) fix and enforce environmental standards, allowing  
13 businesses flexibility in meeting the standards in a manner that  
14 clearly enhances environmental outcomes; and

15 (4) work to achieve consistent and predictable results  
16 for the regulated community and shorter waits for permit issuance.

17 SECTION 4.09. Subchapter A, Chapter 7, Water Code, is  
18 amended by adding Section 7.006 to read as follows:

19 Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by  
20 rule shall adopt a general enforcement policy that describes the  
21 commission's approach to enforcement.

22 (b) The commission shall assess, update, and publicly adopt  
23 specific enforcement policies regularly, including policies  
24 regarding the calculation of penalties and deterrence to prevent  
25 the economic benefit of noncompliance.

26 (c) The commission shall make the policies available to the  
27 public, including by posting the policies on the commission's

1 Internet website.

2 SECTION 4.10. Sections 7.052(a) and (c), Water Code, are  
3 amended to read as follows:

4 (a) The amount of the penalty for a violation of Chapter 37  
5 of this code, Chapter 366, 371, or 372, Health and Safety Code, or  
6 Chapter 1903, Occupations Code, may not exceed \$5,000 [~~\$2,500~~] a  
7 day for each violation.

8 (c) The amount of the penalty for all other violations  
9 within the jurisdiction of the commission to enforce may not exceed  
10 \$25,000 [~~\$10,000~~] a day for each violation.

11 SECTION 4.11. Section 7.067, Water Code, is amended to read  
12 as follows:

13 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The  
14 commission may compromise, modify, or remit, with or without  
15 conditions, an administrative penalty imposed under this  
16 subchapter. In determining the appropriate amount of a penalty for  
17 settlement of an administrative enforcement matter, the commission  
18 may consider a respondent's willingness to contribute to  
19 supplemental environmental projects that are approved by the  
20 commission, giving preference to projects that benefit the  
21 community in which the alleged violation occurred. The commission  
22 may encourage the cleanup of contaminated property through the use  
23 of supplemental environmental projects. The commission may approve  
24 a supplemental environmental project with activities in territory  
25 of the United Mexican States if the project substantially benefits  
26 territory in this state in a manner described by Subsection (b).  
27 Except as provided by Subsection (a-1), the [The] commission may

1 not approve a project that is necessary to bring a respondent into  
2 compliance with environmental laws, that is necessary to remediate  
3 environmental harm caused by the respondent's alleged violation, or  
4 that the respondent has already agreed to perform under a  
5 preexisting agreement with a governmental agency.

6 (a-1) The commission may approve a supplemental  
7 environmental project that is necessary to bring a respondent into  
8 compliance with environmental laws or that is necessary to  
9 remediate environmental harm caused by the respondent's alleged  
10 violation if the respondent is a local government.

11 (a-2) The commission shall develop a policy to prevent  
12 regulated entities from systematically avoiding compliance through  
13 the use of supplemental environmental projects under Subsection  
14 (a-1), including a requirement for an assessment of:

15 (1) the respondent's financial ability to pay  
16 administrative penalties;

17 (2) the ability of the respondent to remediate the  
18 harm or come into compliance; and

19 (3) the need for corrective action.

20 (b) In this section:

21 (1) "Local government" means a school district,  
22 county, municipality, junior college district, river authority,  
23 water district or other special district, or other political  
24 subdivision created under the constitution or a statute of this  
25 state.

26 (2) "Supplemental [~~,"supplemental~~] environmental  
27 project" means a project that prevents pollution, reduces the

1 amount of pollutants reaching the environment, enhances the quality  
2 of the environment, or contributes to public awareness of  
3 environmental matters.

4 SECTION 4.12. Section 13.4151(a), Water Code, is amended to  
5 read as follows:

6 (a) If a person, affiliated interest, or entity subject to  
7 the jurisdiction of the commission violates this chapter or a rule  
8 or order adopted under this chapter, the commission may assess a  
9 penalty against that person, affiliated interest, or entity as  
10 provided by this section. The penalty may be in an amount not to  
11 exceed \$5,000 [~~\$500~~] a day. Each day a violation continues may be  
12 considered a separate violation.

13 SECTION 4.13. Section 26.028(d), Water Code, is amended to  
14 read as follows:

15 (d) Notwithstanding any other provision of this chapter,  
16 the commission, at a regular meeting without the necessity of  
17 holding a public hearing, may approve an application to renew or  
18 amend a permit if:

19 (1) the applicant is not applying to:

20 (A) increase significantly the quantity of waste  
21 authorized to be discharged; or

22 (B) change materially the pattern or place of  
23 discharge;

24 (2) the activities to be authorized by the renewed or  
25 amended permit will maintain or improve the quality of waste  
26 authorized to be discharged;

27 (3) for NPDES permits, notice and the opportunity to

1 request a public meeting shall be given in compliance with NPDES  
2 program requirements, and the commission shall consider and respond  
3 to all timely received and significant public comment; and

4 (4) the commission determines that an applicant's  
5 compliance history under the method for using ~~[evaluating]~~  
6 compliance history developed by the commission under Section 5.754  
7 raises no issues regarding the applicant's ability to comply with a  
8 material term of its permit.

9 SECTION 4.14. Section 26.0281, Water Code, is amended to  
10 read as follows:

11 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In  
12 considering the issuance, amendment, or renewal of a permit to  
13 discharge effluent comprised primarily of sewage or municipal  
14 waste, the commission shall consider the compliance history of the  
15 applicant and its operator under the method for using ~~[evaluating]~~  
16 compliance history developed by the commission under Section 5.754.  
17 In considering an applicant's compliance history under this  
18 subsection, the commission shall consider as evidence of compliance  
19 information regarding the applicant's implementation of an  
20 environmental management system at the facility for which the  
21 permit, permit amendment, or permit renewal is sought. In this  
22 section, "environmental management system" has the meaning  
23 assigned by Section 5.127.

24 SECTION 4.15. Section 26.040(h), Water Code, is amended to  
25 read as follows:

26 (h) Notwithstanding other provisions of this chapter, the  
27 commission, after hearing, shall deny or suspend a discharger's

1 authority to discharge under a general permit if the commission  
2 determines that the discharger's compliance history is classified  
3 as unsatisfactory according to commission standards [~~in the lowest~~  
4 ~~classification~~] under Sections 5.753 and 5.754 and rules adopted  
5 and procedures developed under those sections. A hearing under this  
6 subsection is not subject to Chapter 2001, Government Code.

7 SECTION 4.16. Section 26.3467, Water Code, is amended by  
8 adding Subsections (d) and (e) to read as follows:

9 (d) A person may not deliver any regulated substance into an  
10 underground storage tank regulated under this chapter unless the  
11 underground storage tank has been issued a valid, current  
12 underground storage tank registration and certificate of  
13 compliance under Section 26.346. The commission may impose an  
14 administrative penalty against a person who violates this  
15 subsection. The commission shall adopt rules as necessary to  
16 enforce this subsection.

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

21 (1) a valid paper delivery certificate presented by  
22 the owner or operator of the underground storage tank or displayed  
23 at the facility associated with the underground storage tank;

24 (2) a temporary delivery authorization presented by  
25 the owner or operator of the underground storage tank or displayed  
26 at the facility associated with the underground storage tank; or

27 (3) registration and self-certification information

1 for the underground storage tank obtained from the commission's  
2 Internet website not more than 30 days before the date of delivery.

3 SECTION 4.17. Section 26.351, Water Code, is amended by  
4 adding Subsections (c-1) and (c-2) to read as follows:

5 (c-1) The commission may undertake corrective action to  
6 remove an underground or aboveground storage tank that:

7 (1) is not in compliance with the requirements of this  
8 chapter;

9 (2) is out of service;

10 (3) presents a contamination risk; and

11 (4) is owned or operated by a person who is financially  
12 unable to remove the tank.

13 (c-2) The commission shall adopt rules to implement  
14 Subsection (c-1), including rules regarding:

15 (1) the determination of the financial ability of the  
16 tank owner or operator to remove the tank; and

17 (2) the assessment of the potential risk of  
18 contamination from the site.

19 SECTION 4.18. Section 26.3573(d), Water Code, is amended to  
20 read as follows:

21 (d) The commission may use the money in the petroleum  
22 storage tank remediation account to pay:

23 (1) necessary expenses associated with the  
24 administration of the petroleum storage tank remediation account  
25 and the groundwater protection cleanup program;

26 (2) expenses associated with investigation, cleanup,  
27 or corrective action measures performed in response to a release or

1 threatened release from a petroleum storage tank, whether those  
2 expenses are incurred by the commission or pursuant to a contract  
3 between a contractor and an eligible owner or operator as  
4 authorized by this subchapter;

5 (3) subject to the conditions of Subsection (f),  
6 expenses associated with investigation, cleanup, or corrective  
7 action measures performed in response to a release or threatened  
8 release of hydraulic fluid or spent oil from hydraulic lift systems  
9 or tanks located at a vehicle service and fueling facility and used  
10 as part of the operations of that facility; ~~and~~

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

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

18 SECTION 4.19. Section 26.3574, Water Code, is amended by  
19 amending Subsection (b) and adding Subsection (b-1) to read as  
20 follows:

21 (b) A fee is imposed on the delivery of a petroleum product  
22 on withdrawal from bulk of that product as provided by this  
23 subsection. Each operator of a bulk facility on withdrawal from  
24 bulk of a petroleum product shall collect from the person who orders  
25 the withdrawal a fee in an amount determined as follows:

26 (1) not more than \$3.125 [~~\$3.75~~] for each delivery  
27 into a cargo tank having a capacity of less than 2,500 gallons [~~for~~



1 ~~the state fiscal year beginning September 1, 2007, through the~~  
2 ~~state fiscal year ending August 31, 2011];~~

3 (2) not more than \$6.25 [~~\$7.50~~] for each delivery into  
4 a cargo tank having a capacity of 2,500 gallons or more but less  
5 than 5,000 gallons [~~for the state fiscal year beginning September~~  
6 ~~1, 2007, through the state fiscal year ending August 31, 2011];~~

7 (3) not more than \$9.37 [~~\$11.75~~] for each delivery  
8 into a cargo tank having a capacity of 5,000 gallons or more but  
9 less than 8,000 gallons [~~for the state fiscal year beginning~~  
10 ~~September 1, 2007, through the state fiscal year ending August 31,~~  
11 ~~2011];~~

12 (4) not more than \$12.50 [~~\$15.00~~] for each delivery  
13 into a cargo tank having a capacity of 8,000 gallons or more but  
14 less than 10,000 gallons [~~for the state fiscal year beginning~~  
15 ~~September 1, 2007, through the state fiscal year ending August 31,~~  
16 ~~2011]; and~~

17 (5) not more than \$6.25 [~~\$7.50~~] for each increment of  
18 5,000 gallons or any part thereof delivered into a cargo tank having  
19 a capacity of 10,000 gallons or more [~~for the state fiscal year~~  
20 ~~beginning September 1, 2007, through the state fiscal year ending~~  
21 ~~August 31, 2011)].~~

22 (b-1) The commission by rule shall set the amount of the fee  
23 in Subsection (b) in an amount not to exceed the amount necessary to  
24 cover the agency's costs of administering this subchapter, as  
25 indicated by the amount appropriated by the legislature from the  
26 petroleum storage tank remediation account for that purpose.

27 SECTION 4.20. Section 27.025(g), Water Code, is amended to

1 read as follows:

2 (g) Notwithstanding the other provisions of this chapter,  
3 the commission, after hearing, shall deny or suspend authorization  
4 for the use of an injection well under a general permit if the  
5 commission determines that the owner's compliance history is  
6 classified as unsatisfactory according to commission standards [~~in~~  
7 ~~the lowest classification~~] under Sections 5.753 and 5.754 and rules  
8 adopted and procedures developed under those sections. A hearing  
9 under this subsection is not subject to the requirements relating  
10 to a contested case hearing under Chapter 2001, Government Code.

11 SECTION 4.21. Section 27.051(d), Water Code, is amended to  
12 read as follows:

13 (d) The commission, in determining if the use or  
14 installation of an injection well is in the public interest under  
15 Subsection (a)(1), shall consider, but shall not be limited to the  
16 consideration of:

17 (1) compliance history of the applicant and related  
18 entities under the method for using [~~evaluating~~] compliance history  
19 developed by the commission under Section 5.754 and in accordance  
20 with the provisions of Subsection (e);

21 (2) whether there is a practical, economic, and  
22 feasible alternative to an injection well reasonably available; and

23 (3) if the injection well will be used for the disposal  
24 of hazardous waste, whether the applicant will maintain sufficient  
25 public liability insurance for bodily injury and property damage to  
26 third parties that is caused by sudden and non-sudden accidents or  
27 will otherwise demonstrate financial responsibility in a manner

1 adopted by the commission in lieu of public liability insurance. A  
2 liability insurance policy which satisfies the policy limits  
3 required by the hazardous waste management regulations of the  
4 commission for the applicant's proposed pre-injection facilities  
5 shall be deemed "sufficient" under this subdivision if the policy:

6 (A) covers the injection well; and

7 (B) is issued by a company that is authorized to  
8 do business and to write that kind of insurance in this state and is  
9 solvent and not currently under supervision or in conservatorship  
10 or receivership in this state or any other state.

11 SECTION 4.22. Section 32.101(c), Water Code, is amended to  
12 read as follows:

13 (c) The commission, in determining if the use or  
14 installation of a subsurface area drip dispersal system is in the  
15 public interest under Subsection (a)(1), shall consider:

16 (1) compliance history of the applicant and related  
17 entities under the method for using [~~evaluating~~] compliance history  
18 developed by the commission under Section 5.754 and in accordance  
19 with the provisions of Subsection (d) of this section;

20 (2) whether there is a practical, economic, and  
21 feasible alternative to a subsurface area drip dispersal system  
22 reasonably available; and

23 (3) any other factor the commission considers  
24 relevant.

25 SECTION 4.23. Section 49.198(a), Water Code, is amended to  
26 read as follows:

27 (a) A district may elect to file annual financial reports

1 with the executive director in lieu of the district's compliance  
2 with Section 49.191 provided:

3 (1) the district had no bonds or other long-term (more  
4 than one year) liabilities outstanding during the fiscal period;

5 (2) the district did not have gross receipts from  
6 operations, loans, taxes, or contributions in excess of \$250,000  
7 [~~\$100,000~~] during the fiscal period; and

8 (3) the district's cash and temporary investments were  
9 not in excess of \$100,000 at any time during the fiscal period.

10 SECTION 4.24. Sections 361.089(a), (e), and (f), Health and  
11 Safety Code, are amended to read as follows:

12 (a) The commission may, for good cause, deny or amend a  
13 permit it issues or has authority to issue for reasons pertaining to  
14 public health, air or water pollution, or land use, or for having a  
15 compliance history that is classified as unsatisfactory according  
16 to commission standards [~~in the lowest classification~~] under  
17 Sections 5.753 and 5.754, Water Code, and rules adopted and  
18 procedures developed under those sections.

19 (e) The commission may deny an original or renewal permit if  
20 it is found, after notice and hearing, that:

21 (1) the applicant or permit holder has a compliance  
22 history that is classified as unsatisfactory according to  
23 commission standards [~~in the lowest classification~~] under Sections  
24 5.753 and 5.754, Water Code, and rules adopted and procedures  
25 developed under those sections;

26 (2) the permit holder or applicant made a false or  
27 misleading statement in connection with an original or renewal

1 application, either in the formal application or in any other  
2 written instrument relating to the application submitted to the  
3 commission, its officers, or its employees;

4 (3) the permit holder or applicant is indebted to the  
5 state for fees, payment of penalties, or taxes imposed by this title  
6 or by a rule of the commission; or

7 (4) the permit holder or applicant is unable to ensure  
8 that the management of the hazardous waste management facility  
9 conforms or will conform to this title and the rules of the  
10 commission.

11 (f) Before denying a permit under this section, the  
12 commission must find:

13 (1) that the applicant or permit holder has a  
14 compliance history that is classified as unsatisfactory according  
15 to commission standards [~~in the lowest classification~~] under  
16 Sections 5.753 and 5.754, Water Code, and rules adopted and  
17 procedures developed under those sections; or

18 (2) that the permit holder or applicant is indebted to  
19 the state for fees, payment of penalties, or taxes imposed by this  
20 title or by a rule of the commission.

21 SECTION 4.25. Section 382.0518, Health and Safety Code, is  
22 amended by amending Subsection (c) and adding Subsection (j) to  
23 read as follows:

24 (c) In considering the issuance, amendment, or renewal of a  
25 permit, the commission may consider the applicant's compliance  
26 history in accordance with the method for using [~~evaluating~~]  
27 compliance history developed by the commission under Section 5.754,

1 Water Code. In considering an applicant's compliance history under  
2 this subsection, the commission shall consider as evidence of  
3 compliance information regarding the applicant's implementation of  
4 an environmental management system at the facility for which the  
5 permit, permit amendment, or permit renewal is sought. In this  
6 subsection, "environmental management system" has the meaning  
7 assigned by Section 5.127, Water Code.

8 (j) The commission may not issue a permit for a new electric  
9 generating facility unless the applicant has submitted an  
10 assessment that compares the best available control technologies  
11 for a water-cooling technology to the technology proposed for use  
12 by the facility.

13 SECTION 4.26. Section 382.056(o), Health and Safety Code,  
14 is amended to read as follows:

15 (o) Notwithstanding other provisions of this chapter, the  
16 commission may hold a hearing on a permit amendment, modification,  
17 or renewal if the commission determines that the application  
18 involves a facility for which the applicant's compliance history is  
19 classified as unsatisfactory according to commission standards [~~in~~  
20 ~~the lowest classification]~~ under Sections 5.753 and 5.754, Water  
21 Code, and rules adopted and procedures developed under those  
22 sections.

23 SECTION 4.27. Subchapter C, Chapter 382, Health and Safety  
24 Code, is amended by adding Section 382.059 to read as follows:

25 Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT  
26 APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This  
27 section applies to a permit amendment application submitted to

1 allow an electric generating facility to comply with Section 112 of  
2 the federal Clean Air Act (42 U.S.C. Section 7412), including a  
3 requirement to use applicable maximum achievable control  
4 technology.

5 (b) The commission shall provide an opportunity for a public  
6 hearing and the submission of public comment on an application for a  
7 permit amendment under this section in the manner provided by  
8 Section 382.0561.

9 (c) The commission shall send notice of a decision on an  
10 application for a permit amendment under this section in the manner  
11 provided by Section 382.0562.

12 (d) A person affected by a decision of the commission to  
13 issue or deny a permit amendment may move for rehearing and is  
14 entitled to judicial review under Section 382.032.

15 SECTION 4.28. Section 401.110(a), Health and Safety Code,  
16 is amended to read as follows:

17 (a) In making a determination whether to grant, deny, amend,  
18 renew, revoke, suspend, or restrict a license or registration, the  
19 commission may consider an applicant's or license holder's  
20 technical competence, financial qualifications, and compliance  
21 history under the method for using [~~evaluation of~~] compliance  
22 history developed by the commission under Section 5.754, Water  
23 Code.

24 SECTION 4.29. Section 401.112(a), Health and Safety Code,  
25 is amended to read as follows:

26 (a) The commission, in making a licensing decision on a  
27 specific license application to process or dispose of low-level

1 radioactive waste from other persons, shall consider:

2 (1) site suitability, geological, hydrological, and  
3 meteorological factors, and natural hazards;

4 (2) compatibility with present uses of land near the  
5 site;

6 (3) socioeconomic effects on surrounding communities  
7 of operation of the licensed activity and of associated  
8 transportation of low-level radioactive waste;

9 (4) the need for and alternatives to the proposed  
10 activity, including an alternative siting analysis prepared by the  
11 applicant;

12 (5) the applicant's qualifications, including:

13 (A) financial and technical qualifications and  
14 compliance history under the method for using [~~evaluation of~~]  
15 compliance history developed by the commission under Section 5.754,  
16 Water Code, for an application to the commission; and

17 (B) the demonstration of financial  
18 qualifications under Section 401.108;

19 (6) background monitoring plans for the proposed site;

20 (7) suitability of facilities associated with the  
21 proposed activities;

22 (8) chemical, radiological, and biological  
23 characteristics of the low-level radioactive waste and waste  
24 classification under Section 401.053;

25 (9) adequate insurance of the applicant to cover  
26 potential injury to any property or person, including potential  
27 injury from risks relating to transportation;



- 1           (10) training programs for the applicant's employees;  
2           (11) a monitoring, record-keeping, and reporting  
3 program;  
4           (12) spill detection and cleanup plans for the  
5 licensed site and related to associated transportation of low-level  
6 radioactive waste;  
7           (13) decommissioning and postclosure care plans;  
8           (14) security plans;  
9           (15) worker monitoring and protection plans;  
10          (16) emergency plans; and  
11          (17) a monitoring program for applicants that includes  
12 prelicense and postlicense monitoring of background radioactive  
13 and chemical characteristics of the soils, groundwater, and  
14 vegetation.

15           SECTION 4.30. (a) Not later than September 1, 2012, the  
16 Texas Commission on Environmental Quality by rule shall establish  
17 the method for evaluating compliance history as required by Section  
18 5.753(a), Water Code, as amended by this article. Until the  
19 commission adopts that method, the commission shall continue in  
20 effect its current standard for evaluating compliance history.

21           (b) The changes in law made by Sections 7.052 and 13.4151,  
22 Water Code, as amended by this article, apply only to a violation  
23 that occurs on or after the effective date of this Act. For  
24 purposes of this section, a violation occurs before the effective  
25 date of this Act if any element of the violation occurs before that  
26 date. A violation that occurs before the effective date of this Act  
27 is covered by the law in effect on the date the violation occurred,

1 and the former law is continued in effect for that purpose.

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

6 SECTION 4.31. Section 49.198(a), Water Code, as amended by  
7 this Act, applies to a district that files its annual financial  
8 report on or after the effective date of this Act. A district that  
9 files its annual financial report before the effective date of this  
10 Act is governed by the law in effect on the date the report is filed,  
11 and that law is continued in effect for that purpose.

12 ARTICLE 5. WATER RIGHTS

13 SECTION 5.01. Section 11.002(12), Water Code, is amended to  
14 read as follows:

15 (12) "Agriculture" means any of the following  
16 activities:

17 (A) cultivating the soil to produce crops for  
18 human food, animal feed, or planting seed or for the production of  
19 fibers;

20 (B) the practice of floriculture, viticulture,  
21 silviculture, and horticulture, including the cultivation of  
22 plants in containers or nonsoil media, by a nursery grower;

23 (C) raising, feeding, or keeping animals for  
24 breeding purposes or for the production of food or fiber, leather,  
25 pelts, or other tangible products having a commercial value;

26 (D) raising or keeping equine animals;

27 (E) wildlife management; [~~and~~]

1 (F) planting cover crops, including cover crops  
2 cultivated for transplantation, or leaving land idle for the  
3 purpose of participating in any governmental program or normal crop  
4 or livestock rotation procedure; and

5 (G) aquaculture, as defined by Section 134.001,  
6 Agriculture Code.

7 SECTION 5.02. Section 11.031, Water Code, is amended by  
8 adding Subsections (d), (e), and (f) to read as follows:

9 (d) Each person who has a water right issued by the  
10 commission or who impounds, diverts, or otherwise uses state water  
11 shall maintain water use information required under Subsection (a)  
12 on a monthly basis during the months a water rights holder uses  
13 permitted water. The person shall make the information available  
14 to the commission on the commission's request.

15 (e) Except as provided by Subsection (a), the commission may  
16 request information maintained under Subsection (d) only during a  
17 drought or other emergency shortage of water or in response to a  
18 complaint.

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

21 SECTION 5.03. Subchapter B, Chapter 11, Water Code, is  
22 amended by adding Section 11.053 to read as follows:

23 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)  
24 During a period of drought or other emergency shortage of water, as  
25 defined by commission rule, the executive director by order may  
26 require any person or entity that receives or may receive a water  
27 transfer under this section to comply with drought management

1 measures adopted by the commission.

2 (b) During a period of drought or other emergency shortage  
3 of water, the executive director by order may:

4 (1) temporarily suspend the right of any person who  
5 holds a water right to use the water, in accordance with the  
6 priority of water rights established by Section 11.027; and

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

9 (c) The executive director in ordering a suspension or  
10 adjustment under this section shall ensure that an action taken:

11 (1) maximizes the beneficial use of water;

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

13 (3) prevents the waste of water; and

14 (4) to the greatest extent practicable, conforms to  
15 the order of preferences established by Section 11.024.

16 (d) The commission shall adopt rules to implement this  
17 section, including rules:

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

20 (2) specifying the:

21 (A) conditions under which the executive  
22 director may issue an order under this section;

23 (B) terms of an order issued under this section,  
24 including the maximum duration of a temporary suspension or  
25 adjustment under this section; and

26 (C) procedures for appealing an order issued  
27 under this section to the commission; and

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

4           SECTION 5.04. Subchapter D, Chapter 11, Water Code, is  
5 amended by adding Section 11.1273 to read as follows:

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

12           (b) Not later than the first anniversary of the date the  
13 executive director determines that an application to amend a water  
14 management plan is administratively complete, the executive  
15 director shall complete a technical review of the plan.

16           (c) If the executive director submits a written request for  
17 additional information to the applicant, the applicant shall submit  
18 the requested information to the executive director not later than  
19 the 30th day after the date the applicant receives the request or  
20 not later than the deadline agreed to by the executive director and  
21 the applicant, if applicable. The review period required by  
22 Subsection (b) for completing the technical review is tolled until  
23 the date the executive director receives the requested information  
24 from the applicant.

25           (d) The commission shall provide an opportunity for public  
26 comment and a public hearing on the application, consistent with  
27 the process for other water rights applications.



1 recover costs of operating and maintaining the compact waste  
2 disposal facility and a reasonable profit on the operation of that  
3 facility;

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

8 (3) provide an amount to fund local public projects  
9 under Section 401.244;

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

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

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

21 SECTION 6.02. Subchapter F, Chapter 401, Health and Safety  
22 Code, is amended by adding Section 401.251 to read as follows:

23 Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT  
24 COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal  
25 compact commission account is an account in the general revenue  
26 fund.

27 (b) The commission shall deposit in the account the portion

1 of the fee collected under Section 401.245 that is calculated to  
2 support the activities of the Texas Low-Level Radioactive Waste  
3 Disposal Compact Commission as required by Section 4.04(4), Texas  
4 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of  
5 this code).

6 (c) Money in the account may be appropriated only to support  
7 the operations of the Texas Low-Level Radioactive Waste Disposal  
8 Compact Commission.

9 SECTION 6.03. Sections 5.701(n) and (p), Water Code, are  
10 amended to read as follows:

11 (n)(1) Each provider of potable water or sewer utility  
12 service shall collect a regulatory assessment from each retail  
13 customer as follows:

14 (A) A public utility as defined in Section 13.002  
15 [~~of this code~~] shall collect from each retail customer a regulatory  
16 assessment equal to one percent of the charge for retail water or  
17 sewer service.

18 (B) A water supply or sewer service corporation  
19 as defined in Section 13.002 [~~of this code~~] shall collect from each  
20 retail customer a regulatory assessment equal to [~~one-half of~~] one  
21 percent of the charge for retail water or sewer service.

22 (C) A district as defined in Section 49.001 [~~of~~  
23 ~~this code~~] that provides potable water or sewer utility service to  
24 retail customers shall collect from each retail customer a  
25 regulatory assessment equal to one-half of one percent of the  
26 charge for retail water or sewer service.

27 (2) The regulatory assessment may be listed on the



1 customer's bill as a separate item and shall be collected in  
2 addition to other charges for utility services.

3 (3) The [~~commission shall use the~~] assessments  
4 collected under this subsection may be appropriated by a rider to  
5 the General Appropriations Act to an agency with duties related to  
6 water and sewer utility regulation solely to pay costs and expenses  
7 incurred by the agency [~~commission~~] in the regulation of districts,  
8 water supply or sewer service corporations, and public utilities  
9 under Chapter 13[~~, Water Code~~].

10 (4) The commission shall annually use a portion of the  
11 assessments to provide on-site technical assistance and training to  
12 public utilities, water supply or sewer service corporations, and  
13 districts. The commission shall contract with others to provide  
14 the services.

15 (5) The commission by rule may establish due dates,  
16 collection procedures, and penalties for late payment related to  
17 regulatory assessments under this subsection. The executive  
18 director shall collect all assessments from the utility service  
19 providers.

20 (6) The commission shall assess a penalty against a  
21 municipality with a population of more than 1.5 million that does  
22 not provide municipal water and sewer services in an annexed area in  
23 accordance with Section 43.0565, Local Government Code. A penalty  
24 assessed under this paragraph shall be not more than \$1,000 for each  
25 day the services are not provided after March 1, 1998, for areas  
26 annexed before January 1, 1993, or not provided within 4-1/2 years  
27 after the effective date of the annexation for areas annexed on or

1 after January 1, 1993. A penalty collected under this paragraph  
2 shall be deposited to the credit of the water resource management  
3 account to be used to provide water and sewer service to residents  
4 of the city.

5 (7) The regulatory assessment does not apply to water  
6 that has not been treated for the purpose of human consumption.

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

13 (1) Subsection (b), to the extent those fees are paid  
14 by water districts, and Subsections (e), (f), and (n);

15 (2) ~~[Sections 13.4521 and 13.4522, or~~

16 ~~[3)]~~ Section 54.037(c); or

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

18 SECTION 6.04. Subchapter L, Chapter 13, Water Code, is  
19 repealed.

20 SECTION 6.05. The changes in law made by Section 5.701,  
21 Water Code, as amended by this article, apply only to a fee assessed  
22 on or after January 1, 2012. A fee assessed before January 1, 2012,  
23 is governed by the law in effect at the time the fee was assessed,  
24 and the former law is continued in effect for that purpose.

25 ARTICLE 7. WATER AND SEWER UTILITIES

26 SECTION 7.01. Subchapter E, Chapter 13, Water Code, is  
27 amended by adding Section 13.1325 to read as follows:



1 SECTION 8.03. Section 367.007, Health and Safety Code, is  
2 amended to read as follows:

3 Sec. 367.007. ADMINISTRATION. (a) [~~The council is not an~~  
4 ~~advisory body to the commission. The commission, at the direction~~  
5 ~~of the council, shall implement council decisions.~~

6 [~~(b) The council may enter into an interagency contract with~~  
7 ~~the commission to provide staff and other administrative support as~~  
8 ~~required to improve the quality of wastewater treatment and reduce~~  
9 ~~the cost of providing wastewater treatment to consumers.~~

10 [~~(c)~~] The commission [~~council~~] may accept grants and  
11 donations from other sources to supplement the fees collected under  
12 Section 367.010. Grants and donations shall be deposited to the  
13 credit of the water resource management [~~on-site wastewater~~  
14 ~~treatment research~~] account and may be disbursed as the commission  
15 [~~council~~] directs and in accordance with Section 367.008.

16 (b) [~~(d)~~] Administrative and facilities support costs are  
17 payable from the water resources management [~~on-site wastewater~~  
18 ~~treatment research~~] account.

19 [~~(e) The council may award grants and enter into contracts~~  
20 ~~in its own name and on its own behalf.~~]

21 SECTION 8.04. Section 367.008, Health and Safety Code, is  
22 amended to read as follows:

23 Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The  
24 commission [~~council~~] shall establish procedures for awarding  
25 competitive grants and disbursing grant money.

26 (b) The commission [~~council~~] may award competitive grants  
27 to:

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

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

12           (c) The commission shall seek the advice of relevant experts  
13 when choosing research topics, awarding grants, and holding  
14 educational conferences associated with activities under this  
15 chapter. [~~The council may award grants or make other expenditures~~  
16 ~~authorized under this chapter only after the comptroller certifies~~  
17 ~~that the on-site wastewater treatment research account contains~~  
18 ~~enough money to pay for those expenditures.~~]

19           SECTION 8.05. Section 367.009, Health and Safety Code, is  
20 amended to read as follows:

21           Sec. 367.009. APPROPRIATIONS.        Money collected and  
22 appropriated for the purposes of this chapter shall be disbursed as  
23 the commission [~~council~~] directs and in accordance with Section  
24 367.008.

25           SECTION 8.06. Section 367.010(d), Health and Safety Code,  
26 is amended to read as follows:

27           (d) The fee proceeds shall be deposited to the credit of the

1 water resources management [~~on-site wastewater treatment research~~]  
2 account.

3 SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,  
4 367.006, and 367.011, Health and Safety Code, are repealed.

5 SECTION 8.08. (a) On the effective date of this Act, the  
6 Texas Commission on Environmental Quality shall assume the  
7 administration of all grants of the On-site Wastewater Treatment  
8 Research Council in existence on that date.

9 (b) The Texas Commission on Environmental Quality shall  
10 assume all contracts held by the On-site Wastewater Treatment  
11 Research Council on the effective date of this Act, including all  
12 rights and obligations associated with the contracts.

13 ARTICLE 9. RATE NOTIFICATION

14 SECTION 9.01. Section 13.043(i), Water Code, is amended to  
15 read as follows:

16 (i) The governing body of a municipally owned utility or a  
17 political subdivision, within 60 [~~30~~] days after the date of a final  
18 decision on a rate change, shall provide individual written notice  
19 to each ratepayer eligible to appeal who resides outside the  
20 boundaries of the municipality or the political subdivision. The  
21 notice must include, at a minimum, the effective date of the new  
22 rates, the new rates, and the location where additional information  
23 on rates can be obtained. The governing body of a municipally owned  
24 utility or a political subdivision may provide the notice  
25 electronically if the utility or political subdivision has access  
26 to a ratepayer's e-mail address.

27 SECTION 9.02. Section 13.187(b), Water Code, is amended to

1 read as follows:

2 (b) A copy of the statement of intent shall be mailed, sent  
3 by e-mail, or delivered to the appropriate offices of each affected  
4 municipality, and to any other affected persons as required by the  
5 regulatory authority's rules.

6 ARTICLE 10. CONTESTED CASE HEARINGS

7 SECTION 10.01. Section 382.056(n), Health and Safety Code,  
8 is amended to read as follows:

9 (n) In this subsection, "affected person" has the meaning  
10 assigned by Section 5.115, Water Code. Except as provided by  
11 Section 382.0561, the commission shall consider a request that the  
12 commission reconsider the executive director's decision or hold a  
13 public hearing in accordance with the applicable procedures  
14 provided by Sections 5.315, 5.316, 5.556, and 5.557, Water Code. In  
15 a public hearing or contested case hearing granted in response to an  
16 affected person's request under Section 5.556, Water Code,  
17 regarding the issuance of a permit under Section 382.0518, a permit  
18 renewal under Section 382.055, or a related permit condition, the  
19 burden of proof is on the affected person to show that the permit  
20 should not be issued or renewed or that a related permit condition  
21 should be imposed, modified, or omitted.

22 SECTION 10.02. Section 5.115(b), Water Code, is amended to  
23 read as follows:

24 (b) At the time an application for a permit or license under  
25 this code is filed with the executive director and is  
26 administratively complete, the commission shall give notice of the  
27 application to any person who may be affected by the granting of the

1 permit or license. A state agency that receives notice under this  
2 subsection may submit comments to the commission in response to the  
3 notice but may not contest the issuance of a permit or license by  
4 the commission. For the purposes of this subsection, "state  
5 agency" does not include a river authority.

6 SECTION 10.03. Sections 5.228(c) and (d), Water Code, are  
7 amended to read as follows:

8 (c) The executive director shall ~~may~~ participate as a  
9 party in contested case permit hearings before the commission or  
10 the State Office of Administrative Hearings to:

11 (1) provide information ~~[for the sole purpose of~~  
12 ~~providing information]~~ to complete the administrative record; and

13 (2) support the executive director's position  
14 developed in the underlying proceeding. ~~[The commission by rule~~  
15 ~~shall specify the factors the executive director must consider in~~  
16 ~~determining, case by case, whether to participate as a party in a~~  
17 ~~contested case permit hearing. In developing the rules under this~~  
18 ~~subsection the commission shall consider, among other factors:~~

19 ~~[(1) the technical, legal, and financial capacity of~~  
20 ~~the parties to the proceeding,~~

21 ~~[(2) whether the parties to the proceeding have~~  
22 ~~participated in a previous contested case hearing,~~

23 ~~[(3) the complexity of the issues presented, and~~

24 ~~[(4) the available resources of commission staff.]~~

25 (d) In a contested case hearing relating to a permit  
26 application, the executive director or the executive director's  
27 designated representative may not rehabilitate the testimony of a



1 witness unless the witness is a commission employee [~~testifying for~~  
2 ~~the sole purpose of providing information to complete the~~  
3 ~~administrative record~~].

4 SECTION 10.04. Subchapter H, Chapter 5, Water Code, is  
5 amended by adding Sections 5.315 and 5.316 to read as follows:

6 Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN  
7 TESTIMONY. In a contested case hearing delegated by the commission  
8 to the State Office of Administrative Hearings that uses prefiled  
9 written testimony, all discovery must be completed before the  
10 deadline for the submission of that testimony, except for water and  
11 sewer ratemaking proceedings.

12 Sec. 5.316. DELEGATED CASES REGARDING PERMIT APPLICATION.  
13 In a contested case hearing delegated by the commission to the State  
14 Office of Administrative Hearings regarding a permit application,  
15 the rules, guidance, and policies in effect at the time the  
16 technical review portion of the application process closes are the  
17 applicable rules, guidance, and policies for the contested case  
18 hearing.

19 SECTION 10.05. Section 5.556, Water Code, is amended by  
20 adding Subsection (g) to read as follows:

21 (g) In a contested case hearing regarding the issuance of a  
22 permit or specific conditions in a permit, the burden of proof is on  
23 the affected person who requested the hearing to show that the  
24 permit should not be issued or renewed or that a related permit  
25 condition should be imposed, modified, or omitted.

26 SECTION 10.06. Section 5.228(e), Water Code, is repealed.

27 SECTION 10.07. (a) Section 5.115(b), Water Code, as

1 amended by this article, applies only to an application for the  
2 issuance, amendment, extension, or renewal of a permit or license  
3 that is received by the Texas Commission on Environmental Quality  
4 on or after the effective date of this Act. An application that is  
5 received before that date is governed by the law in effect at the  
6 time the application is received, and the former law is continued in  
7 effect for that purpose.

8 (b) The changes in law made by this article apply to a  
9 proceeding before the State Office of Administrative Hearings that  
10 is pending or filed on or after September 1, 2011.

11 ARTICLE 11. EFFECTIVE DATE

12 SECTION 11.01. This Act takes effect September 1, 2011.

**ADOPTED**

MAY 12 2011

**ADOPTED**

Y 12 2011

*Leta Stuebel*  
Secretary of the Senate

By: *Jan Huffman* *Leta Stuebel*  
Secretary of the Senate

H.B. No. 2694

Substitute the following for H.B. No. 2694:

By: *Craig Estes*

C.S.H.B. No. 2694

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the continuation and functions of the Texas Commission  
3 on Environmental Quality and abolishing the On-site Wastewater  
4 Treatment Research Council.

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

6 ARTICLE 1. GENERAL PROVISIONS

7 SECTION 1.01. The heading to Chapter 5, Water Code, is  
8 amended to read as follows:

9 CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON  
10 ENVIRONMENTAL QUALITY

11 SECTION 1.02. Section 5.014, Water Code, is amended to read  
12 as follows:

13 Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource~~  
14 ~~Conservation~~] Commission on Environmental Quality is subject to  
15 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
16 in existence as provided by that chapter, the commission is  
17 abolished and this chapter expires September 1, 2023 [~~2011~~].

18 SECTION 1.03. Subchapter C, Chapter 5, Water Code, is  
19 amended by adding Section 5.061 to read as follows:

20 Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN  
21 CONTRIBUTIONS. A member of the commission may not accept a  
22 contribution to a campaign for election to an elected office. If a  
23 member of the commission accepts a campaign contribution, the  
24 person is considered to have resigned from the office and the office

1 immediately becomes vacant. The vacancy shall be filled in the  
2 manner provided by law.

3 SECTION 1.04. Subchapter D, Chapter 5, Water Code, is  
4 amended by adding Section 5.1031 to read as follows:

5 Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE  
6 RESOLUTION. (a) The commission shall develop and implement a  
7 policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter  
9 2008, Government Code, for the adoption of commission rules; and

10 (2) appropriate alternative dispute resolution  
11 procedures under Chapter 2009, Government Code, to assist in the  
12 resolution of internal and external disputes under the commission's  
13 jurisdiction.

14 (b) The commission's procedures relating to alternative  
15 dispute resolution must conform, to the extent possible, to any  
16 model guidelines issued by the State Office of Administrative  
17 Hearings for the use of alternative dispute resolution by state  
18 agencies.

19 (c) The commission shall:

20 (1) coordinate the implementation of the policy  
21 adopted under Subsection (a);

22 (2) provide training as needed to implement the  
23 procedures for negotiated rulemaking or alternative dispute  
24 resolution; and

25 (3) collect data concerning the effectiveness of those  
26 procedures.

27 SECTION 1.05. Section 12.052(a), Water Code, is amended to

1 read as follows:

2 (a) The commission shall make and enforce rules and orders  
3 and shall perform all other acts necessary to provide for the safe  
4 construction, maintenance, repair, and removal of dams located in  
5 this state. In performing the commission's duties under this  
6 subsection, the commission shall identify and focus on the most  
7 hazardous dams in the state.

8 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

9 SECTION 2.01. Section 91.011, Natural Resources Code, is  
10 amended to read as follows:

11 Sec. 91.011. CASING. (a) Before drilling into the oil or  
12 gas bearing rock, the owner or operator of a well being drilled for  
13 oil or gas shall encase the well with good and sufficient wrought  
14 iron or steel casing or with any other material that meets standards  
15 adopted by the commission, particularly where wells could be  
16 subjected to corrosive elements or high pressures and temperatures,  
17 in a manner and to a depth that will exclude surface or fresh water  
18 from the lower part of the well from penetrating the oil or gas  
19 bearing rock, and if the well is drilled through the first into the  
20 lower oil or gas bearing rock, the well shall be cased in a manner  
21 and to a depth that will exclude fresh water above the last oil or  
22 gas bearing rock penetrated.

23 (b) The commission shall adopt rules regarding the depth of  
24 well casings necessary to meet the requirements of this section.

25 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources  
26 Code, is amended by adding Section 91.0115 to read as follows:

27 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The

1 commission shall issue, on request from an applicant for a permit  
2 for a well to be drilled into oil or gas bearing rock, a letter of  
3 determination stating the total depth of surface casing required  
4 for the well by Section 91.011.

5 (b) The commission may charge a fee in an amount to be  
6 determined by the commission for a letter of determination.

7 (c) The commission shall charge a fee not to exceed \$75, in  
8 addition to the fee required by Subsection (b), for processing a  
9 request to expedite a letter of determination. Money collected  
10 under this subsection may be used only to study and evaluate  
11 electronic access to geologic data and surface casing depths under  
12 Section 91.020.

13 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources  
14 Code, is amended by adding Section 91.020 to read as follows:

15 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission  
16 shall work cooperatively with other appropriate state agencies to  
17 study and evaluate electronic access to geologic data and surface  
18 casing depths necessary to protect usable groundwater in this  
19 state.

20 SECTION 2.04. Section 27.033, Water Code, is amended to  
21 read as follows:

22 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~  
23 ~~DIRECTOR~~]. A person making application to the railroad commission  
24 for a permit under this chapter shall submit with the application a  
25 letter of determination from the railroad commission [~~from the~~  
26 ~~executive director~~] stating that drilling and using the disposal  
27 well and injecting oil and gas waste into the subsurface stratum

1 will not endanger the freshwater strata in that area and that the  
2 formation or stratum to be used for the disposal is not freshwater  
3 sand.

4 SECTION 2.05. Section 27.046, Water Code, is amended to  
5 read as follows:

6 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~  
7 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit  
8 under rules adopted under this subchapter until the commission  
9 issues to the applicant for the permit [~~provides to the railroad~~  
10 ~~commission~~] a letter of determination [~~from the executive director~~]  
11 stating that drilling and operating the anthropogenic carbon  
12 dioxide injection well for geologic storage or operating the  
13 geologic storage facility will not injure any freshwater strata in  
14 that area and that the formation or stratum to be used for the  
15 geologic storage facility is not freshwater sand.

16 (b) To make the determination required by Subsection (a),  
17 the railroad commission [~~executive director~~] shall review:

- 18 (1) the area of review and corrective action plans;  
19 (2) any subsurface monitoring plans required during  
20 injection or post injection;  
21 (3) any postinjection site care plans; and  
22 (4) any other elements of the application reasonably  
23 required in order for the railroad commission [~~executive director~~]  
24 to make the determination required by Subsection (a).

25 (c) The railroad commission shall adopt rules to implement  
26 and administer this section.

27 SECTION 2.06. Section 5.701(r), Water Code, is repealed.

1 SECTION 2.07. (a) The Railroad Commission of Texas shall  
2 adopt rules to implement the changes in law made by this article not  
3 later than March 1, 2012.

4 (b) A rule, form, policy, or procedure of the Texas  
5 Commission on Environmental Quality related to the changes in law  
6 made by this article continues in effect as a rule, form, policy, or  
7 procedure of the Railroad Commission of Texas and remains in effect  
8 until amended or replaced by that agency.

9 ARTICLE 3. PUBLIC INTEREST

10 SECTION 3.01. Subchapter F, Chapter 5, Water Code, is  
11 amended by adding Section 5.239 to read as follows:

12 Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The  
13 executive director shall ensure that the agency is responsive to  
14 environmental and citizens' concerns, including environmental  
15 quality and consumer protection.

16 (b) The executive director shall develop and implement a  
17 program to:

18 (1) provide a centralized point for the public to  
19 access information about the commission and to learn about matters  
20 regulated by the commission;

21 (2) identify and assess the concerns of the public in  
22 regard to matters regulated by the commission; and

23 (3) respond to the concerns identified by the program.

24 SECTION 3.02. Section 5.271, Water Code, is amended to read  
25 as follows:

26 Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE  
27 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest



1 counsel is created to ensure that the commission promotes the  
2 public's interest [~~and is responsive to environmental and citizens'~~  
3 ~~concerns including environmental quality and consumer protection~~].  
4 The primary duty of the office is to represent the public interest  
5 as a party to matters before the commission.

6 SECTION 3.03. Subchapter G, Chapter 5, Water Code, is  
7 amended by adding Section 5.2725 to read as follows:

8 Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The  
9 office of public interest counsel shall report to the commission  
10 each year in a public meeting held on a date determined by the  
11 commission to be timely for the commission to include the reported  
12 information in the commission's reports under Sections 5.178(a) and  
13 (b) and in the commission's biennial legislative appropriations  
14 requests as appropriate:

15 (1) an evaluation of the office's performance in  
16 representing the public interest in the preceding year;

17 (2) an assessment of the budget needs of the office,  
18 including the need to contract for outside expertise; and

19 (3) any legislative or regulatory changes recommended  
20 under Section 5.273.

21 (b) The commission and the office of public interest counsel  
22 shall work cooperatively to identify performance measures for the  
23 office.

24 SECTION 3.04. Subchapter G, Chapter 5, Water Code, is  
25 amended by adding Section 5.276 to read as follows:

26 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

27 (a) The commission by rule, after consideration of recommendations

1 from the office of public interest counsel, shall establish factors  
2 the public interest counsel must consider before the public  
3 interest counsel decides to represent the public interest as a  
4 party to a commission proceeding.

5 (b) Rules adopted under this section must include:

6 (1) factors to determine the nature and extent of the  
7 public interest; and

8 (2) factors to consider in prioritizing the workload  
9 of the office of public interest counsel.

10 ARTICLE 4. COMPLIANCE AND ENFORCEMENT

11 SECTION 4.01. Section 5.753, Water Code, is amended by  
12 amending Subsections (a) and (b) and adding Subsection (d-1) to  
13 read as follows:

14 (a) Consistent with other law and the requirements  
15 necessary to maintain federal program authorization, the  
16 commission by rule shall develop a method [~~uniform standard~~] for  
17 evaluating compliance history that ensures consistency in the  
18 evaluation. In developing the method, the commission may account  
19 for differences among regulated entities.

20 (b) The components of compliance history must include:

21 (1) except for orders described by Subsection  
22 (d-1)(2), enforcement orders, court judgments, consent decrees,  
23 and criminal convictions of this state and the federal government  
24 relating to compliance with applicable legal requirements under the  
25 jurisdiction of the commission or the United States Environmental  
26 Protection Agency;

27 (2) notwithstanding any other provision of this code,

1 orders issued under Section 7.070;

2 (3) to the extent readily available to the commission,  
3 enforcement orders, court judgments, and criminal convictions  
4 relating to violations of environmental laws of other states; and

5 (4) changes in ownership.

6 (d-1) The components of compliance history may include:

7 (1) information related to the complexity of the  
8 regulated entity, including:

9 (A) the complexity of the regulatory  
10 requirements applicable to the entity; and

11 (B) the severity of the consequences of  
12 noncompliance by the entity;

13 (2) enforcement orders issued without penalties,  
14 shutdown orders, or other punitive sanctions; and

15 (3) any other positive compliance factors related to  
16 the regulated entity.

17 SECTION 4.02. Section 5.754(d), Water Code, is amended to  
18 read as follows:

19 (d) The commission by rule may require [~~shall establish~~  
20 ~~methods of assessing the compliance history of regulated entities~~  
21 ~~for which it does not have adequate compliance information. The~~  
22 ~~methods may include requiring~~] a compliance inspection to determine  
23 an entity's eligibility for participation in a program that  
24 requires a high level of compliance.

25 SECTION 4.03. Subchapter A, Chapter 7, Water Code, is  
26 amended by adding Section 7.006 to read as follows:

27 Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by

1 rule shall adopt a general enforcement policy that describes the  
2 commission's approach to enforcement.

3 (b) The commission shall assess, update, and publicly adopt  
4 specific enforcement policies regularly, including policies  
5 regarding the calculation of penalties.

6 (c) The commission shall make the policies available to the  
7 public, including by posting the policies on the commission's  
8 Internet website.

9 SECTION 4.04. Sections 7.052(a) and (c), Water Code, are  
10 amended to read as follows:

11 (a) The amount of the penalty for a violation of Chapter 37  
12 of this code, Chapter 366, 371, or 372, Health and Safety Code, or  
13 Chapter 1903, Occupations Code, may not be less than \$50 or greater  
14 than \$5,000 [~~exceed \$2,500~~] a day for each violation.

15 (c) The amount of the penalty for all other violations  
16 within the jurisdiction of the commission to enforce may not be less  
17 than \$50 or greater than \$25,000 [~~exceed \$10,000~~] a day for each  
18 violation.

19 SECTION 4.05. Section 7.067, Water Code, is amended to read  
20 as follows:

21 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The  
22 commission may compromise, modify, or remit, with or without  
23 conditions, an administrative penalty imposed under this  
24 subchapter. In determining the appropriate amount of a penalty for  
25 settlement of an administrative enforcement matter, the commission  
26 may consider a respondent's willingness to contribute to  
27 supplemental environmental projects that are approved by the

1 commission, giving preference to projects that benefit the  
2 community in which the alleged violation occurred. The commission  
3 may encourage the cleanup of contaminated property through the use  
4 of supplemental environmental projects. The commission may approve  
5 a supplemental environmental project with activities in territory  
6 of the United Mexican States if the project substantially benefits  
7 territory in this state in a manner described by Subsection (b).  
8 Except as provided by Subsection (a-1), the [The] commission may  
9 not approve a project that is necessary to bring a respondent into  
10 compliance with environmental laws, that is necessary to remediate  
11 environmental harm caused by the respondent's alleged violation, or  
12 that the respondent has already agreed to perform under a  
13 preexisting agreement with a governmental agency.

14 (a-1) The commission may approve a supplemental  
15 environmental project that is necessary to bring a respondent into  
16 compliance with environmental laws or that is necessary to  
17 remediate environmental harm caused by the respondent's alleged  
18 violation if the respondent is a local government.

19 (a-2) The commission shall develop a policy to prevent  
20 regulated entities from systematically avoiding compliance through  
21 the use of supplemental environmental projects under Subsection  
22 (a-1), including rules requiring an assessment of:

23 (1) the entity's financial ability to pay  
24 administrative penalties;

25 (2) the ability of the entity to remediate the harm or  
26 come into compliance; and

27 (3) the need for corrective action.

1 (b) In this section:

2 (1) "Local government" means a school district,  
3 county, municipality, junior college district, river authority,  
4 water district or other special district, or other political  
5 subdivision created under the constitution or a statute of this  
6 state.

7 (2) "Supplemental [~~,"supplemental~~] environmental  
8 project" means a project that prevents pollution, reduces the  
9 amount of pollutants reaching the environment, enhances the quality  
10 of the environment, or contributes to public awareness of  
11 environmental matters.

12 SECTION 4.06. Section 13.4151(a), Water Code, is amended to  
13 read as follows:

14 (a) If a person, affiliated interest, or entity subject to  
15 the jurisdiction of the commission violates this chapter or a rule  
16 or order adopted under this chapter, the commission may assess a  
17 penalty against that person, affiliated interest, or entity as  
18 provided by this section. The penalty may be in an amount not less  
19 than \$100 or greater than \$5,000 [~~to exceed \$500~~] a day. Each day a  
20 violation continues may be considered a separate violation.

21 SECTION 4.07. Section 26.3467, Water Code, is amended by  
22 adding Subsection (d) to read as follows:

23 (d) A person may not deliver any regulated substance into an  
24 underground storage tank regulated under this chapter unless the  
25 underground storage tank has been issued a valid, current  
26 underground storage tank registration and certificate of  
27 compliance under Section 26.346. The commission may impose an

1 administrative penalty against a person who violates this  
2 subsection. The commission shall adopt rules as necessary to  
3 enforce this subsection.

4 SECTION 4.08. Section 26.351, Water Code, is amended by  
5 adding Subsections (c-1) and (c-2) to read as follows:

6 (c-1) The commission may undertake corrective action to  
7 remove an underground or aboveground storage tank that:

8 (1) is not in compliance with the requirements of this  
9 chapter;

10 (2) is out of service;

11 (3) presents a contamination risk; and

12 (4) is owned or operated by a person who is financially  
13 unable to remediate the tank.

14 (c-2) The commission shall adopt rules to implement  
15 Subsection (c-1), including rules regarding:

16 (1) the determination of the financial ability of the  
17 tank owner or operator to remediate the tank; and

18 (2) the assessment of the potential risk of  
19 contamination from the site.

20 SECTION 4.09. Section 26.3573(d), Water Code, is amended to  
21 read as follows:

22 (d) The commission may use the money in the petroleum  
23 storage tank remediation account to pay:

24 (1) necessary expenses associated with the  
25 administration of the petroleum storage tank remediation account  
26 and the groundwater protection cleanup program;

27 (2) expenses associated with investigation, cleanup,

1 or corrective action measures performed in response to a release or  
2 threatened release from a petroleum storage tank, whether those  
3 expenses are incurred by the commission or pursuant to a contract  
4 between a contractor and an eligible owner or operator as  
5 authorized by this subchapter;

6 (3) subject to the conditions of Subsection (f),  
7 expenses associated with investigation, cleanup, or corrective  
8 action measures performed in response to a release or threatened  
9 release of hydraulic fluid or spent oil from hydraulic lift systems  
10 or tanks located at a vehicle service and fueling facility and used  
11 as part of the operations of that facility; ~~and~~

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

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

19 SECTION 4.10. Section 26.3574, Water Code, is amended by  
20 amending Subsection (b) and adding Subsection (b-1) to read as  
21 follows:

22 (b) A fee is imposed on the delivery of a petroleum product  
23 on withdrawal from bulk of that product as provided by this  
24 subsection. Each operator of a bulk facility on withdrawal from  
25 bulk of a petroleum product shall collect from the person who orders  
26 the withdrawal a fee in an amount determined as follows:

27 (1) not more than \$3.75 for each delivery into a cargo



1 tank having a capacity of less than 2,500 gallons [~~for the state~~  
2 ~~fiscal year beginning September 1, 2007, through the state fiscal~~  
3 ~~year ending August 31, 2011]~~;

4 (2) not more than \$7.50 for each delivery into a cargo  
5 tank having a capacity of 2,500 gallons or more but less than 5,000  
6 gallons [~~for the state fiscal year beginning September 1, 2007,~~  
7 ~~through the state fiscal year ending August 31, 2011]~~;

8 (3) not more than \$11.75 for each delivery into a cargo  
9 tank having a capacity of 5,000 gallons or more but less than 8,000  
10 gallons [~~for the state fiscal year beginning September 1, 2007,~~  
11 ~~through the state fiscal year ending August 31, 2011]~~;

12 (4) not more than \$15.00 for each delivery into a cargo  
13 tank having a capacity of 8,000 gallons or more but less than 10,000  
14 gallons [~~for the state fiscal year beginning September 1, 2007,~~  
15 ~~through the state fiscal year ending August 31, 2011]~~; and

16 (5) not more than \$7.50 for each increment of 5,000  
17 gallons or any part thereof delivered into a cargo tank having a  
18 capacity of 10,000 gallons or more [~~for the state fiscal year~~  
19 ~~beginning September 1, 2007, through the state fiscal year ending~~  
20 ~~August 31, 2011]~~.

21 (b-1) The commission by rule shall set the amount of the fee  
22 in Subsection (b) in an amount not to exceed the amount necessary to  
23 cover the agency's costs of administering this subchapter, as  
24 indicated by the amount appropriated by the legislature from the  
25 petroleum storage tank remediation account for that purpose.

26 SECTION 4.11. (a) Not later than September 1, 2012, the  
27 Texas Commission on Environmental Quality by rule shall establish

1 the method for evaluating compliance history as required by Section  
2 5.753(a), Water Code, as amended by this article. Until the  
3 commission adopts that method, the commission shall continue in  
4 effect its current standard for evaluating compliance history.

5 (b) The changes in law made by Sections 7.052 and 13.4151,  
6 Water Code, as amended by this article, apply only to a violation  
7 that occurs on or after the effective date of this Act. For  
8 purposes of this section, a violation occurs before the effective  
9 date of this Act if any element of the violation occurs before that  
10 date. A violation that occurs before the effective date of this Act  
11 is covered by the law in effect on the date the violation occurred,  
12 and the former law is continued in effect for that purpose.

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

17 ARTICLE 5. WATER RIGHTS

18 SECTION 5.01. Section 11.031, Water Code, is amended by  
19 adding Subsections (d), (e), and (f) to read as follows:

20 (d) Each person who has a water right issued by the  
21 commission or who impounds, diverts, or otherwise uses state water  
22 shall maintain water use information on a monthly basis during the  
23 months a water rights holder uses permitted water. The person shall  
24 make the information available to the commission on the  
25 commission's request.

26 (e) The commission may request information maintained under  
27 Subsection (d) only during a drought or other emergency shortage of

1 water.

2 (f) A person submitting a report under Subsection (a) is not  
3 required to include information maintained under Subsection (d).

4 SECTION 5.02. Subchapter B, Chapter 11, Water Code, is  
5 amended by adding Section 11.053 to read as follows:

6 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)  
7 During a period of drought or other emergency shortage of water, the  
8 executive director by order may:

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

11 (2) adjust the allocation of water between water  
12 rights holders.

13 (b) The executive director in ordering a suspension or an  
14 allocation adjustment under this section shall ensure that an  
15 action taken:

16 (1) maximizes the beneficial use of water;

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

18 (3) prevents the waste of water.

19 (c) The commission shall adopt rules to implement this  
20 section, including rules to determine the conditions under which  
21 the executive director may take action under this section.

22 SECTION 5.03. Section 11.326, Water Code, is amended by  
23 adding Subsections (g) and (h) to read as follows:

24 (g) For a water basin in which a watermaster is not  
25 appointed, the executive director shall:

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

1           (2) report the findings and make recommendations to  
2 the commission.

3           (h) The commission shall:

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

6           (2) include the findings and recommendations under  
7 Subsection (g) in the commission's biennial report to the  
8 legislature.

9                           ARTICLE 6. FUNDING

10           SECTION 6.01. Section 401.246(a), Health and Safety Code,  
11 is amended to read as follows:

12           (a) Compact waste disposal fees adopted by the commission  
13 must be sufficient to:

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

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

22           (3) provide an amount to fund local public projects  
23 under Section 401.244;

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

27           (5) provide an amount necessary to pay compact waste

1 disposal facility licensing fees, to pay compact waste disposal  
2 facility fees set by rule or statute, and to provide security for  
3 the compact waste disposal facility as required by the commission  
4 under law and commission rules; and

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

8 SECTION 6.02. Subchapter F, Chapter 401, Health and Safety  
9 Code, is amended by adding Section 401.251 to read as follows:

10 Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT  
11 COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal  
12 compact commission account is an account in the general revenue  
13 fund.

14 (b) The commission shall deposit in the account the portion  
15 of the fee collected under Section 401.245 that is calculated to  
16 support the activities of the Texas Low-Level Radioactive Waste  
17 Disposal Compact Commission as required by Section 4.04(4), Texas  
18 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of  
19 this code).

20 (c) Money in the account may be appropriated only to support  
21 the operations of the Texas Low-Level Radioactive Waste Disposal  
22 Compact Commission.

23 SECTION 6.03. Sections 5.701(n) and (p), Water Code, are  
24 amended to read as follows:

25 (n)(1) Each provider of potable water or sewer utility  
26 service shall collect a regulatory assessment from each retail  
27 customer as follows:

1 (A) A public utility as defined in Section 13.002  
2 ~~[of this code]~~ shall collect from each retail customer a regulatory  
3 assessment equal to one percent of the charge for retail water or  
4 sewer service.

5 (B) A water supply or sewer service corporation  
6 as defined in Section 13.002 ~~[of this code]~~ shall collect from each  
7 retail customer a regulatory assessment equal to ~~[one-half of]~~ one  
8 percent of the charge for retail water or sewer service.

9 (C) A district as defined in Section 49.001 ~~[of~~  
10 ~~this code]~~ that provides potable water or sewer utility service to  
11 retail customers shall collect from each retail customer a  
12 regulatory assessment equal to ~~[one-half of]~~ one percent of the  
13 charge for retail water or sewer service.

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

17 (3) The ~~[commission shall use the]~~ assessments  
18 collected under this subsection may be appropriated only to the  
19 commission or to the Public Utility Commission of Texas solely to  
20 pay costs and expenses incurred by the agency ~~[commission]~~ in the  
21 regulation of districts, water supply or sewer service  
22 corporations, and public utilities under Chapter 13~~[, Water Code]~~.

23 (4) The commission shall annually use a portion of the  
24 assessments to provide on-site technical assistance and training to  
25 public utilities, water supply or sewer service corporations, and  
26 districts. The commission shall contract with others to provide  
27 the services.

1           (5) The commission by rule may establish due dates,  
2 collection procedures, and penalties for late payment related to  
3 regulatory assessments under this subsection. The executive  
4 director shall collect all assessments from the utility service  
5 providers.

6           (6) The commission shall assess a penalty against a  
7 municipality with a population of more than 1.5 million that does  
8 not provide municipal water and sewer services in an annexed area in  
9 accordance with Section 43.0565, Local Government Code. A penalty  
10 assessed under this paragraph shall be not more than \$1,000 for each  
11 day the services are not provided after March 1, 1998, for areas  
12 annexed before January 1, 1993, or not provided within 4-1/2 years  
13 after the effective date of the annexation for areas annexed on or  
14 after January 1, 1993. A penalty collected under this paragraph  
15 shall be deposited to the credit of the water resource management  
16 account to be used to provide water and sewer service to residents  
17 of the city.

18           (7) The regulatory assessment does not apply to water  
19 that has not been treated for the purpose of human consumption.

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

26           (1) Subsection (b), to the extent those fees are paid  
27 by water districts, and Subsections (e), (f), and (n);

- 1           (2) [~~Sections 13.4521 and 13.4522, or~~  
2           ~~(3)~~] Section 54.037(c); or  
3           (3) Section 367.010, Health and Safety Code.

4           SECTION 6.04. Subchapter L, Chapter 13, Water Code, is  
5 repealed.

6                   ARTICLE 7. WATER AND SEWER UTILITIES

7           SECTION 7.01. Subchapter E, Chapter 13, Water Code, is  
8 amended by adding Section 13.1325 to read as follows:

9           Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. The  
10 state agency with jurisdiction over rates charged by water and  
11 sewer utilities shall provide to a ratepayer, at a reasonable cost  
12 to the ratepayer, electronic copies of information provided to the  
13 agency under Sections 13.016, 13.043, and 13.187, to the extent  
14 that the information is available and not confidential.

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

17           SECTION 8.01. The heading to Chapter 367, Health and Safety  
18 Code, is amended to read as follows:

19           CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH [~~COUNCIL~~]

20           SECTION 8.02. Section 367.001, Health and Safety Code, is  
21 amended to read as follows:

22           Sec. 367.001. DEFINITIONS. In this chapter:

23                   (1) "Commission" means the Texas Commission on  
24 Environmental Quality [~~Natural Resource Conservation Commission~~].

25                   (2) [~~"Council" means the On-site Wastewater Treatment~~  
26 ~~Research Council.~~

27                   ~~(3)~~ "On-site wastewater treatment system" means a



1 system of treatment devices or disposal facilities that:

2 (A) is used for the disposal of domestic sewage,  
3 excluding liquid waste resulting from the processes used in  
4 industrial and commercial establishments;

5 (B) is located on the site where the sewage is  
6 produced; and

7 (C) produces not more than 5,000 gallons of waste  
8 a day.

9 SECTION 8.03. Section 367.007, Health and Safety Code, is  
10 amended to read as follows:

11 Sec. 367.007. ADMINISTRATION. (a) ~~[The council is not an~~  
12 ~~advisory body to the commission. The commission, at the direction~~  
13 ~~of the council, shall implement council decisions.~~

14 ~~[(b) The council may enter into an interagency contract with~~  
15 ~~the commission to provide staff and other administrative support as~~  
16 ~~required to improve the quality of wastewater treatment and reduce~~  
17 ~~the cost of providing wastewater treatment to consumers.~~

18 ~~[(c)]~~ The commission ~~[council]~~ may accept grants and  
19 donations from other sources to supplement the fees collected under  
20 Section 367.010. Grants and donations shall be deposited to the  
21 credit of the water resource management ~~[on-site wastewater~~  
22 ~~treatment research]~~ account and may be disbursed as the commission  
23 ~~[council]~~ directs and in accordance with Section 367.008.

24 (b) ~~[(d)]~~ Administrative and facilities support costs are  
25 payable from the water resources management ~~[on-site wastewater~~  
26 ~~treatment research]~~ account.

27 ~~[(e) The council may award grants and enter into contracts~~

1 ~~in its own name and on its own behalf.]~~

2 SECTION 8.04. Section 367.008, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The  
5 commission [~~council~~] shall establish procedures for awarding  
6 competitive grants and disbursing grant money.

7 (b) The commission [~~council~~] may award competitive grants  
8 to:

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

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

20 (c) The commission shall seek the advice of relevant experts  
21 when choosing research topics, awarding grants, and holding  
22 educational conferences associated with activities under this  
23 chapter. [~~The council may award grants or make other expenditures~~  
24 ~~authorized under this chapter only after the comptroller certifies~~  
25 ~~that the on-site wastewater treatment research account contains~~  
26 ~~enough money to pay for those expenditures.]~~

27 SECTION 8.05. Section 367.009, Health and Safety Code, is

1 amended to read as follows:

2           Sec. 367.009. APPROPRIATIONS. Money appropriated for the  
3 purposes of this chapter shall be disbursed as the commission  
4 [~~council~~] directs and in accordance with Section 367.008.

5           SECTION 8.06. Section 367.010(d), Health and Safety Code,  
6 is amended to read as follows:

7           (d) The fee proceeds shall be deposited to the credit of the  
8 water resources management [~~on-site wastewater treatment research~~]  
9 account.

10          SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,  
11 367.006, and 367.011, Health and Safety Code, are repealed.

12          SECTION 8.08. (a) On the effective date of this Act, the  
13 Texas Commission on Environmental Quality shall assume the  
14 administration of all grants of the On-site Wastewater Treatment  
15 Research Council in existence on that date.

16          (b) The Texas Commission on Environmental Quality shall  
17 assume all contracts held by the On-site Wastewater Treatment  
18 Research Council on the effective date of this Act, including all  
19 rights and obligations associated with the contracts.

20                                   ARTICLE 9. EFFECTIVE DATE

21          SECTION 9.01. This Act takes effect September 1, 2011.

# ADOPTED

MAY 12 2011

*Atty. Gen.*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *John Huffman*

1 Amend C.S.H.B. 2694 (senate committee printing) as follows:

2 (1) In SECTION 2.02 of the bill, in added Section  
3 91.0115(c), Natural Resources Code (page 2, line 33), strike  
4 "only".

5 (2) In ARTICLE 2 of the bill, insert the following  
6 appropriately numbered SECTION and renumber subsequent SECTIONS  
7 accordingly:

8 SECTION 2.\_\_\_\_. Subchapter D, Chapter 91, Natural Resources  
9 Code, is amended by adding Section 91.1015 to read as follows:

10 Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The  
11 commission shall adopt rules to establish groundwater protection  
12 requirements for operations that are within the jurisdiction of the  
13 commission, including requirements relating to the depth of surface  
14 casing for wells.

15 (3) In SECTION 2.05 of the bill, in amended Section  
16 27.046(a), Water Code (page 2, line 58), between "until the" and  
17 "commission", insert "railroad".

18 (4) In SECTION 4.01 of the bill, in added Section  
19 5.753(d-1), Water Code (page 4, line 35), strike "other".

20 (5) In SECTION 4.05 of the bill, in added Section  
21 7.067(a-2), Water Code (page 5, line 27), strike "rules requiring"  
22 and substitute "a requirement for".

23 (6) In SECTION 4.05 of the bill, in added Section  
24 7.067(a-2)(1), Water Code (page 5, line 28), strike "entity's" and  
25 substitute "respondent's".

26 (7) In SECTION 4.05 of the bill, in added Section  
27 7.067(a-2)(2), Water Code (page 5, line 30), strike "ability of the  
28 entity" and substitute "respondent's ability".

29 (8) In SECTION 4.08 of the bill, in added Section

1 26.351(c-1), Water Code (page 6, line 3), strike "remediate" and  
2 substitute "remove".

3 (9) In SECTION 4.08 of the bill, in added Section  
4 26.351(c-2), Water Code (page 6, line 7), strike "remediate" and  
5 substitute "remove".

6 (10) In SECTION 4.11 of the bill, in Subsection (c) of the  
7 transition language (page 7, line 17), strike "a petroleum" and  
8 substitute "an underground".

9 (11) In SECTION 4.11 of the bill (page 7, between lines 18  
10 and 19), insert the following:

11 (d) The fee applicable to a delivery in Section 26.3574(b),  
12 Water Code, as that subsection existed immediately before the  
13 effective date of this Act, remains in effect until the Texas  
14 Commission on Environmental Quality adopts and implements a fee  
15 applicable to that delivery under Section 26.3574(b-1), Water Code,  
16 as added by this article.

17 (12) In the recital to SECTION 5.01 of the bill (page 7, line  
18 21), strike "(e), and (f)" and substitute "(e), (f), and (g)".

19 (13) In SECTION 5.01 of the bill, in amended Section 11.031,  
20 Water Code (page 7, between lines 32 and 33), insert the following:

21 (g) Subsections (e) and (f) do not affect the authority of a  
22 watermaster to obtain water use information under other law.

23 (14) In SECTION 6.01 of the bill, in amended Section  
24 401.246(a), Health and Safety Code (page 8, line 20), between  
25 "Waste" and "Compact", insert "Disposal".

26 (15) In SECTION 6.03 of the bill, in amended Section  
27 5.701(n)(3), Water Code (page 8, lines 59-60), strike "only to the  
28 commission or to the Public Utility Commission of Texas" and  
29 substitute "by a rider to the General Appropriations Act to an  
30 agency with duties related to water and sewer utility regulation or  
31 representation of residential and small commercial consumers of

1 water and sewer utility services".

2 (16) In ARTICLE 6 of the bill, insert the following  
3 appropriately numbered SECTION and renumber subsequent SECTIONS of  
4 the ARTICLE accordingly:

5 SECTION 6.\_\_\_\_. The changes in law made by Section 5.701,  
6 Water Code, as amended by this article, apply only to a fee assessed  
7 on or after January 1, 2012. A fee assessed before January 1, 2012,  
8 is governed by the law in effect immediately before the effective  
9 date of this Act, and the former law is continued in effect for that  
10 purpose.

11 (17) In SECTION 7.01 of the bill, strike added Section  
12 13.1325, Water Code (page 9, lines 35-40), and substitute the  
13 following:

14 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On  
15 request, the state agency with jurisdiction over rates charged by  
16 water and sewer utilities shall provide, at a reasonable cost,  
17 electronic copies of all information provided to the agency under  
18 Sections 13.016, 13.043, and 13.187 to the extent that the  
19 information is available and is not confidential. Copies of all  
20 information provided to the agency shall be provided to the Office  
21 of Public Utility Counsel, on request, at no cost to the office.

22 (18) In SECTION 8.05 of the bill, in amended Section  
23 367.009, Health and Safety Code (page 10, line 40), between "Money"  
24 and "appropriated", insert "collected and".

# ADOPTED

MAY 12 2011

FLOOR AMENDMENT NO. 2

*Atay Spaw*  
Secretary of the Senate

BY: *Steve Hegar*

1 Amend C.S.H.B. No. 2694 (senate committee report) in SECTION  
2 5.02 of the bill by striking added Section 11.053, Water Code (page  
3 7, lines 35 through 50), and substituting the following:

4 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)  
5 During a period of drought or other emergency shortage of water, as  
6 defined by commission rule, the executive director by order may, in  
7 accordance with the priority of water rights established by Section  
8 11.027:

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

11 (2) temporarily adjust the diversions of water by  
12 water rights holders.

13 (b) The executive director in ordering a suspension or  
14 adjustment under this section shall ensure that an action taken:

15 (1) maximizes the beneficial use of water;

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

17 (3) prevents the waste of water;

18 (4) takes into consideration the efforts of the  
19 affected water rights holders to develop and implement the water  
20 conservation plans and drought contingency plans required by this  
21 chapter;

22 (5) to the greatest extent practicable, conforms to  
23 the order of preferences established by Section 11.024; and

24 (6) does not require the release of water that, at the  
25 time the order is issued, is lawfully stored in a reservoir under  
26 water rights associated with that reservoir.

27 (c) The commission shall adopt rules to implement this  
28 section, including rules:

29 (1) defining a drought or other emergency shortage of

1 water for purposes of this section; and  
2                   (2) specifying the:  
3                   (A) conditions under which the executive  
4 director may issue an order under this section;  
5                   (B) terms of an order issued under this section,  
6 including the maximum duration of a temporary suspension or  
7 adjustment under this section; and  
8                   (C) procedures for notice of, an opportunity for  
9 a hearing on, and the appeal to the commission of an order issued  
10 under this section.



# ADOPTED

MAY 12 2011

FLOOR AMENDMENT NO. 3

*Atty Gen*  
Secretary of the Senate

BY: E/rife

1 Amend C.S.H.B. 2694 (Senate Committee Printing) by  
2 inserting a new subsection (b-1) on page 2, line 4, as follows:

3 (b-1) The commission <sup>a</sup> ~~may~~ enter into an agreement with an  
4 owner of a dam who is required to reevaluate the adequacy of an  
5 existing dam or spillway. The agreement may include timelines  
6 to achieve compliance with the commission's design criteria and  
7 may authorize deferral of compliance with the criteria, as  
8 appropriate.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 16, 2011**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**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 Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2694, As Passed 2nd House: a positive impact of \$2,227,000 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	\$1,087,000
2013	\$1,140,000
2014	\$1,143,000
2015	\$1,146,000
2016	\$1,150,000

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Water Resource Management</i> 153	Probable Savings/ (Cost) from <i>Water Resource Management</i> 153
2012	\$1,688,256	(\$601,256)	(\$631,256)	\$601,256
2013	\$1,741,256	(\$601,256)	\$5,011,736	\$601,256
2014	\$1,744,256	(\$601,256)	\$5,011,736	\$601,256
2015	\$1,747,256	(\$601,256)	\$5,011,736	\$601,256
2016	\$1,751,256	(\$601,256)	\$5,011,736	\$601,256

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Petro Sto Tank Remed Acct</i> 655	Probable Savings/ (Cost) from <i>Low-level Waste Acct</i> 88	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated--Low Level Compact</i>	Probable Savings/ (Cost) from <i>New General Revenue Dedicated--Low-Level Compact</i>
2012	\$25,833,000	\$100,000	\$583,298	(\$583,298)
2013	\$28,396,000	\$100,000	\$583,298	(\$583,298)
2014	\$28,569,000	\$100,000	\$583,298	(\$583,298)
2015	\$28,724,000	\$100,000	\$583,298	(\$583,298)
2016	\$28,896,000	\$100,000	\$583,298	(\$583,298)

<b>Fiscal Year</b>	<b>Probable Savings/ (Cost) from Water Districts and Water Supply Corporations</b>
2012	(\$5,642,992)
2013	(\$5,642,992)
2014	(\$5,642,992)
2015	(\$5,642,992)
2016	(\$5,642,992)

## **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 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 ranges already in law. It would establish a minimum penalty of \$50 and a maximum penalty of \$5,000 for violations involving Occupational Licensing, On-Site Sewage Disposal, Used Oil, and Performance Standards for Plumbing Fixtures. It would also establish a minimum penalty of \$50 and 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. 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 to 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 all utilities, including water supply corporations and districts, and eliminates 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 would also provide that proceeds of The Water Resource Management Account No. 153 could be appropriated through a rider in the General Appropriations Act to an agency with duties related to water and sewer utility regulation or representation of residential and small commercial consumers of water and sewer utility services.

The bill also would clarify the Texas Low-Level Radioactive Waste Disposal Compact Commission's (LLRWDC) 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 LLRWDC 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 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 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, and this estimate assumes the annual revenue stream would thus be equal to one-fifth of the \$2.8 million or \$560,000.

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 \$28 to \$29 million per year. This estimate assumes that the TCEQ would set the petroleum products delivery fee at a rate to generate sufficient revenue to cover the agency's 2010-11 annual expenditures out of the PST Remediation Account No. 655 of \$26.2 million plus estimated associated employee benefit costs of \$3.0 million per fiscal year. If the Legislature would appropriate less than the \$26.2 million per fiscal year assumed in this estimate for the 2012-13 biennium, the revenue generated by the fee could be less. The revenue amount shown in the table above for fiscal year 2012 is only \$25,833,000 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. The tables above also reflect a gain to the General Revenue Fund ranging from \$527,000 in fiscal year 2012 to \$580,000 in fiscal year 2016 because of a 2 percent service charge by the Comptroller that would occur if the petroleum products delivery fee is continued.

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 is expected to result in a gain of \$5,642,992 per fiscal year to the General Revenue-Dedicated Water Resources Management Account No. 153, beginning in fiscal year 2013. This estimate is based amounts paid by two categories that currently pay 0.5 percent, Water Districts and Water Supply Corporations. Actual collections from these entities totaled \$5.6 million in calendar year 2009, so collecting an additional 0.5 percent on each of the two categories is expected to yield an additional \$5.6 million per fiscal year. Because the TCEQ assesses the fee after the beginning of each fiscal year based on the prior year's activity, this estimate assumes that the extension of rates to the additional categories would not apply until the assessment levied at the end of fiscal year 2012, resulting in additional revenue beginning in fiscal year 2013, as reflected in the table above.

Because the bill would allow for appropriations from the Water Resource Management Account No. 153 to an agency with duties related to water and sewer utility regulation or representation of residential and small commercial consumers of water and sewer utility services, if additional legislation were to pass, such as Senate Bill 661, transferring the regulation of water and wastewater utilities from TCEQ to the Public Utility Commission (PUC), then appropriations out the Water Resources Management Account No. 153 sufficient to fund the programs could be made directly 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 of 2010-11 that is provided the Council would be 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 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 or a water district 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 \$5.6 million per fiscal year. 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, 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

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

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 5, 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. ), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2694, Committee Report 2nd House, Substituted: a positive impact of \$2,227,000 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	\$1,087,000
2013	\$1,140,000
2014	\$1,143,000
2015	\$1,146,000
2016	\$1,150,000

**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	\$1,688,256	(\$601,256)	\$5,011,736	\$601,256
2013	\$1,741,256	(\$601,256)	\$5,011,736	\$601,256
2014	\$1,744,256	(\$601,256)	\$5,011,736	\$601,256
2015	\$1,747,256	(\$601,256)	\$5,011,736	\$601,256
2016	\$1,751,256	(\$601,256)	\$5,011,736	\$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	\$25,833,000	\$100,000	\$583,298	(\$583,298)
2013	\$28,396,000	\$100,000	\$583,298	(\$583,298)
2014	\$28,569,000	\$100,000	\$583,298	(\$583,298)
2015	\$28,724,000	\$100,000	\$583,298	(\$583,298)
2016	\$28,896,000	\$100,000	\$583,298	(\$583,298)

<b>Fiscal Year</b>	<b>Probable Savings/ (Cost) from Water Districts and Water Supply Corporations</b>
2012	(\$5,642,992)
2013	(\$5,642,992)
2014	(\$5,642,992)
2015	(\$5,642,992)
2016	(\$5,642,992)

**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 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 ranges already in law. It would establish a minimum penalty of \$50 and a maximum penalty of \$5,000 for violations involving Occupational Licensing, On-Site Sewage Disposal, Used Oil, and Performance Standards for Plumbing Fixtures. It would also establish a minimum penalty of \$50 and 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. 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 to 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 all utilities, including water supply corporations and districts, and eliminates 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 the Public Utilities Commission (PUC) for the regulation of water and wastewater utilities.

The bill also would clarify the Texas Low-Level Radioactive Waste Disposal Compact Commission's (LLRWDC) 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 LLRWDC 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 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 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, and this estimate assumes the annual revenue stream would thus be equal to one-fifth of the \$2.8 million or \$560,000.

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 \$28 to \$29 million per year. This estimate assumes that the TCEQ would set the petroleum products delivery fee at a rate to generate sufficient revenue to cover the agency's 2010-11 annual expenditures out of the PST Remediation Account No. 655 of \$26.2 million plus estimated associated employee benefit costs of \$3.0 million per fiscal year. If the Legislature would appropriate less than the \$26.2 million per fiscal year assumed in this estimate for the 2012-13 biennium, the revenue generated by the fee could be less. The revenue amount shown in the table above for fiscal year 2012 is only \$25,833,000 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. The tables above also reflect a gain to the General Revenue Fund ranging from \$527,000 in fiscal year 2012 to \$580,000 in fiscal year 2016 because of a 2 percent service charge by the Comptroller that would occur if the petroleum products delivery fee is continued.

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 is expected to result in a gain of \$5,642,992 per fiscal year to the General Revenue-Dedicated Water Resources Management Account No. 153. This estimate is based amounts paid by two categories that currently pay 0.5 percent, Water Districts and Water Supply Corporations. Actual collections from these entities totaled \$5.6 million in calendar year 2009, so collecting an additional 0.5 percent on each of the two categories is expected to yield an additional \$5.6 million per fiscal year. Because the bill would allow the Public Utility Commission (PUC) to receive funds from the Water Resource Management Account No. 153 for regulation of water and wastewater utilities, 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 sufficient to fund the programs could be made directly 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 of 2010-11 that is provided the Council would be 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 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 or a water district 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 \$5.6 million per fiscal year. The cost to each local government would depend on 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, 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

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

**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 <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Water Resource Management</i> 153	Probable Savings/ (Cost) from <i>Water Resource Management</i> 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 <i>Petro Sto Tank Remed Acct</i> 655	Probable Savings/ (Cost) from <i>Low-level Waste Acct</i> 88	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated--Low Level Compact</i>	Probable Savings/ (Cost) from <i>New General Revenue Dedicated--Low-Level Compact</i>
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)

<b>Fiscal Year</b>	<b>Probable Savings/ (Cost) from <i>Water Districts and Water Supply Corporations</i></b>
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 (LLRWDC) 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 LLRWDC 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 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

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 14, 2011**

**TO:** Honorable Wayne Smith, Chair, House Committee on Environmental Regulation

**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.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2694, Committee Report 1st House, Substituted: a positive impact of \$1,120,000 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	\$560,000
2013	\$560,000
2014	\$560,000
2015	\$560,000
2016	\$560,000

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Water Resource Management</i> 153	Probable Savings/ (Cost) from <i>Water Resource Management</i> 153
2012	\$1,161,256	(\$601,256)	(\$631,259)	\$601,256
2013	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256
2014	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256
2015	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256
2016	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Petro Sto Tank Remed Acct</i> 655	Probable Savings/ (Cost) from <i>Low-level Waste Acct</i> 88	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated--Low Level Compact</i>	Probable Savings/ (Cost) from <i>New General Revenue Dedicated--Low-Level Compact</i>
2012	\$26,731,000	\$100,000	\$583,298	(\$583,298)
2013	\$29,200,000	\$100,000	\$583,298	(\$583,298)
2014	\$29,200,000	\$100,000	\$583,298	(\$583,298)
2015	\$29,200,000	\$100,000	\$583,298	(\$583,298)
2016	\$29,200,000	\$100,000	\$583,298	(\$583,298)

Fiscal Year	Probable Savings/ (Cost) from <i>Water Districts and Water Supply Corporations</i>
2012	\$0
2013	(\$5,642,992)
2014	(\$5,642,992)
2015	(\$5,642,992)
2016	(\$5,642,992)

### **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 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 ranges already in law. It would establish a minimum penalty of \$50 and a maximum penalty of \$5,000 for violations involving Occupational Licensing, On-Site Sewage Disposal, Used Oil, and Performance Standards for Plumbing Fixtures. It would also establish a minimum penalty of \$50 and 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. 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 to 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 all utilities, including water supply corporations and districts which currently only pay 0.5 percent. 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 also would clarify the Texas Low-Level Radioactive Waste Disposal Compact Commission's (LLRWDC) 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 LLRWDC



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 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 \$29.2 million per year. This estimate assumes that the TCEQ would set the petroleum products delivery fee at a rate to generate sufficient revenue to cover the agency's 2010-11 annual expenditures out of the PST Remediation Account No. 655 of \$26.2 million plus estimated associated employee benefit costs of \$3.0 million per fiscal year. If the Legislature were to appropriate less than the \$26.2 million per fiscal year assumed in this estimate for the 2012-13 biennium, the revenue generated by the fee could be less. The revenue amount shown in the table above for fiscal year 2012 is only \$26,731,000 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.

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 is expected to result in a gain of \$5,642,992 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 two categories of fee payors that currently pay 0.5 percent, Water Districts and Water Supply Corporations. Actual collections from these entities totaled \$5.6 million in calendar year 2009, so collecting an additional 0.5 percent on each of the two categories is expected to yield an additional \$5.6 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 bienium 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 or a water district 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 \$5.6 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:** 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality, 116 Sunset Advisory Commission

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

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 6, 2011**

**TO:** Honorable Wayne Smith, Chair, House Committee on Environmental Regulation

**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 Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2694, As Introduced: a positive impact of \$1,120,000 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	\$560,000
2013	\$560,000
2014	\$560,000
2015	\$560,000
2016	\$560,000

**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	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256
2013	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256
2014	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256
2015	\$1,161,256	(\$601,256)	\$5,011,736	\$601,256
2016	\$1,161,256	(\$601,256)	\$5,011,736	\$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	\$26,731,000	(\$100,000)	\$583,298	(\$583,298)
2013	\$29,200,000	(\$100,000)	\$583,298	(\$583,298)
2014	\$29,200,000	(\$100,000)	\$583,298	(\$583,298)
2015	\$29,200,000	(\$100,000)	\$583,298	(\$583,298)
2016	\$29,200,000	(\$100,000)	\$583,298	(\$583,298)

Fiscal Year	Probable Savings/ (Cost) from <i>Water Districts and Water Supply Corporations</i>
2012	(\$5,642,992)
2013	(\$5,642,992)
2014	(\$5,642,992)
2015	(\$5,642,992)
2016	(\$5,642,992)

## 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 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 ranges already in law. It would establish a minimum penalty of \$50 and a maximum penalty of \$5,000 for violations involving Occupational Licensing, On-Site Sewage Disposal, Used Oil, and Performance Standards for Plumbing Fixtures. It would also establish a minimum penalty of \$50 and 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. 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 to 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 all utilities, including water supply corporations and districts, and eliminates 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 the Public Utilities Commission (PUC) for the regulation of water and wastewater utilities.

The bill also would clarify the Texas Low-Level Radioactive Waste Disposal Compact Commission's (LLRWDC) 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 LLRWDC 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 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 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, and this estimate assumes the annual revenue stream would thus be equal to one-fifth of the \$2.8 million or \$560,000.

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 \$29.2 million per year. This estimate assumes that the TCEQ would set the petroleum products delivery fee at a rate to generate sufficient revenue to cover the agency's 2010-11 annual expenditures out of the PST Remediation Account No. 655 of \$26.2 million plus estimated associated employee benefit costs of \$3.0 million per fiscal year. If the Legislature would appropriate less than the \$26.2 million per fiscal year assumed in this estimate for the 2012-13 biennium, the revenue generated by the fee could be less. The revenue amount shown in the table above for fiscal year 2012 is only \$26,731,000 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.

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 is expected to result in a gain of \$5,642,992 per fiscal year to the General Revenue-Dedicated Water Resources Management

Account No. 153. This estimate is based amounts paid by two categories that currently pay 0.5 percent, Water Districts and Water Supply Corporations. Actual collections from these entities totaled \$5.6 million in calendar year 2009, so collecting an additional 0.5 percent on each of the two categories is expected to yield an additional \$5.6 million per fiscal year. Because the bill would allow the Public Utility Commission (PUC) to receive funds from the Water Resource Management Account No. 153 for regulation of water and wastewater utilities, 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 sufficient to fund the programs could be made directly 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 of 2010-11 that is provided the Council would be 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 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 or a water district 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 \$5.6 million per fiscal year. 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, SD, TL