

House Bill 2694
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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ARTICLE 1. GENERAL PROVISIONS

Same as House version.

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

SECTION 1.01. Same as House version.

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

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

SECTION 1.02. Same as House version.

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:

SECTION 1.03. Same as House version.

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

SECTION 1.04. Subchapter D, Chapter 5, Water Code, is

SECTION 1.04. Same as House version.

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amended by adding Section 5.1031 to read as follows:

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

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and
(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

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

(c) The commission shall:

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

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

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

SECTION 1.05. Section 5.2291(b), Water Code, is amended to read as follows:

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

No equivalent provision.

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

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

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

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

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

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

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

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

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

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

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

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

(5) the person was performing related work at the site on or

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before July 1, 2011; and

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

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

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

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

(b-1) The commission may enter into an agreement with an owner of a dam who is required to reevaluate the adequacy of an existing dam or spillway. The agreement may include timelines to achieve compliance with the commission's design criteria and may authorize deferral of compliance with the criteria, as appropriate.

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

ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

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SECTION 1.05. Section 12.052(a), Water Code, is amended to read as follows:

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

(b-1) The commission **my** enter into an agreement with an owner of a dam who is required to reevaluate the adequacy of an existing dam or spillway. The agreement may include timelines to achieve compliance with the commission's design criteria and may authorize deferral of compliance with the criteria, as appropriate. [FA3]

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

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

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

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

Sec. 91.0115. CASING; LETTER OF DETERMINATION.
(a) The commission shall issue, on request from an applicant for a permit for a well to be drilled into oil or gas bearing rock, a letter of determination stating the total depth of surface casing required for the well by Section 91.011.

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

(c) The commission shall charge a fee not to exceed \$75, in addition to the fee required by Subsection (b), for processing a request to expedite a letter of determination. Money collected

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SECTION 2.01. Same as House version.

SECTION 2.02. Same as House version. [FA1(1) reverts the substitute to the House engrossed version.]

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under this subsection may be used to study and evaluate electronic access to geologic data and surface casing depths under Section 91.020.

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

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

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

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

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

Sec. 27.033. LETTER OF DETERMINATION [FROM EXECUTIVE DIRECTOR]. A person making application to the railroad commission for a permit under this chapter shall submit with the application a letter of determination from the railroad commission [from the executive director] stating that

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SECTION 2.03. Same as House version.

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

Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The commission shall adopt rules to establish groundwater protection requirements for operations that are within the jurisdiction of the commission, including requirements relating to the depth of surface casing for wells.
[FA1(2)]

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drilling and using the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

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

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

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

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

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

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

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SECTION 2.05. Same as House version. [FA1(3) reverts the substitute to the House engrossed version.]

SECTION 2.06. Same as House version.

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

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

ARTICLE 3. PUBLIC INTEREST

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

Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE.

(a) The executive director shall ensure that the agency is responsive to environmental and citizens' concerns, including environmental quality and consumer protection.

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

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

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

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

SECTION 2.07. Same as House version.

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SECTION 3.01. Same as House version.

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

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

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

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

- (1) an evaluation of the office's performance in representing the public interest in the preceding year;
- (2) an assessment of the budget needs of the office, including the need to contract for outside expertise; and
- (3) any legislative or regulatory changes recommended under Section 5.273.

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

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SECTION 3.03. Same as House version.

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

Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION. (a) The commission by rule, after consideration of recommendations from the office of public interest counsel, shall establish factors the public interest counsel must consider before the public interest counsel decides to represent the public interest as a party to a commission proceeding.

(b) Rules adopted under this section must include:

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

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

ARTICLE 4. COMPLIANCE AND ENFORCEMENT

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

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

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

(1) "Applicable legal requirement" means an environmental

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SECTION 3.04. Same as House version.

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No equivalent provision.

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law, regulation, permit, order, consent[;] decree, or other requirement.

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

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

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

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

(b) The components of compliance history must include:

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

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

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

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No equivalent provision.

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

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

(b) The components of compliance history must include:

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

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

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

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(4) changes in ownership.

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

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

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(4) changes in ownership.

(d-1) The components of compliance history may include:
(1) information related to the complexity of the regulated entity, including:
(A) the complexity of the regulatory requirements applicable to the entity; and
(B) the severity of the consequences of noncompliance by the entity;
(2) enforcement orders issued without penalties, shutdown orders, or other punitive sanctions; and

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(3) any positive compliance factors related to the regulated entity. [FA1(4)]

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

(a) The commission by rule shall establish a set of standards for the classification of a person's compliance history as a means of evaluating compliance history. The commission may consider the person's classification when using compliance history under Subsection (e).

(b) Rules adopted under Subsection (a):

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

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

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

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

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

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

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

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

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- (1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;
- (2) establish criteria for classifying a repeat violator, giving consideration to the size [number] and complexity of the site at which the violations occurred, and limiting consideration to violations of the same nature and the same environmental media that occurred in the preceding five years [facilities owned or operated by the person]; and
- (3) consider:
 - (A) the significance of the violation and whether the person is a repeat violator;
 - (B) the size and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.); and
 - (C) the potential for a violation at the site that is attributable to the nature and complexity of the site.
- (d) The commission by rule may require [~~shall establish methods of assessing the compliance history of regulated entities for which it does not have adequate compliance information. The methods may include requiring~~] a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.
- (e) The commission by rule shall provide for the use of compliance history [~~classifications~~] in commission decisions regarding:
 - (1) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;
 - (2) enforcement;
 - (3) the use of announced inspections; and
 - (4) participation in innovative programs.
- (e-1) The amount of the penalty enhancement or escalation attributed to compliance history may not exceed 100 percent

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

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of the base penalty for an individual violation as determined by the commission's penalty policy. Notices of violation may not be used individually for penalty enhancement or escalation.

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

(h) The commission by rule shall, at a minimum, prohibit a person whose compliance history is classified as unsatisfactory according to commission standards ~~[in the lowest classification developed under this section]~~ from:
[~~(1) receiving an announced inspection; and~~
(2)] obtaining or renewing a flexible permit under the program administered by the commission under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by the commission under Section 5.758.

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

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

- (1) a person's compliance history [~~classification~~]; and
- (2) any voluntary measures undertaken by the person to improve environmental quality.

No equivalent provision.

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

No equivalent provision.

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

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

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

- (1) as [more] protective of the environment and the public health as [than] the method or standard prescribed by the statute or commission rule that would otherwise apply; and
- (2) not inconsistent with federal law.

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

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

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

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- (1) promote [~~market~~] the program to businesses in the state through all available appropriate media;
- (2) endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business;
- (3) fix and enforce environmental standards, allowing businesses flexibility in meeting the standards in a manner that clearly enhances environmental outcomes; and
- (4) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred. The commission may encourage the cleanup of contaminated property through the use of supplemental environmental projects. The commission may approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). Except as provided by Subsection (a-1), the [The] commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(a-1) The commission may approve a supplemental environmental project that is necessary to bring a respondent

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

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

Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred. The commission may encourage the cleanup of contaminated property through the use of supplemental environmental projects. The commission may approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). Except as provided by Subsection (a-1), the [The] commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(a-1) The commission may approve a supplemental environmental project that is necessary to bring a respondent

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into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation if the respondent is a local government.

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

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

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

(3) the need for corrective action.

(b) In this section:

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

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

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

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

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into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation if the respondent is a local government.

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

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

(2) the respondent's ability to remediate the harm or come into compliance; and

(3) the need for corrective action.

(b) In this section:

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

(2) "Supplemental [~~-, "supplemental]~~ environmental project" means a project that prevents pollution, reduces the amount of pollutants reaching the environment, enhances the quality of the environment, or contributes to public awareness of environmental matters. [FA1(5)-(7)]

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

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

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continues may be considered a separate violation.

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

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

(1) the applicant is not applying to:

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

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

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

(3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and

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

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

Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In considering the issuance, amendment, or

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day. Each day a violation continues may be considered a separate violation.

No equivalent provision.

No equivalent provision.

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renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider the compliance history of the applicant and its operator under the method for using ~~[evaluating]~~ compliance history developed by the commission under Section 5.754. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this section, "environmental management system" has the meaning assigned by Section 5.127.

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

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger's compliance history is classified as unsatisfactory according to commission standards ~~[in the lowest classification]~~ under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections. A hearing under this subsection is not subject to Chapter 2001, Government Code.

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

(d) A person may not deliver any regulated substance into an underground storage tank regulated under this chapter unless the underground storage tank has been issued a valid, current

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No equivalent provision.

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

(d) A person may not deliver any regulated substance into an underground storage tank regulated under this chapter unless the underground storage tank has been issued a valid, current

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underground storage tank registration and certificate of compliance under Section 26.346. The commission may impose an administrative penalty against a person who violates this subsection. The commission shall adopt rules as necessary to enforce this subsection.

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

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

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

(3) registration and self-certification information for the underground storage tank obtained from the commission's Internet website not more than 30 days before the date of delivery.

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

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

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

(2) is out of service;

(3) presents a contamination risk; and

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

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

(1) the determination of the financial ability of the tank owner

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underground storage tank registration and certificate of compliance under Section 26.346. The commission may impose an administrative penalty against a person who violates this subsection. The commission shall adopt rules as necessary to enforce this subsection.

SECTION 4.08. Same as House version. [FA1(8),(9) reverts the substitute to the House engrossed version.]

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or operator to remove the tank; and
(2) the assessment of the potential risk of contamination from the site.

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

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

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

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter;

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

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

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

SECTION 4.09. Same as House version.

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

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

(1) not more than \$3.125 ~~[\$3.75]~~ for each delivery into a cargo tank having a capacity of less than 2,500 gallons ~~[for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011];~~

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

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

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

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

(b-1) The commission by rule shall set the amount of the fee

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

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

(1) not more than \$3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons ~~[for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011];~~

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

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

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

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

(b-1) The commission by rule shall set the amount of the fee

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in Subsection (b) in an amount not to exceed the amount necessary to cover the agency's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose.

SECTION 4.20. Section 27.025(g), Water Code, is amended to read as follows:

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

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

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

- (1) compliance history of the applicant and related entities under the method for using [~~evaluating~~] compliance history developed by the commission under Section 5.754 and in accordance with the provisions of Subsection (e);
- (2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available; and

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in Subsection (b) in an amount not to exceed the amount necessary to cover the agency's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose.

No equivalent provision.

No equivalent provision.

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(3) if the injection well will be used for the disposal of hazardous waste, whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

- (A) covers the injection well; and
- (B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

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

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

- (1) compliance history of the applicant and related entities under the method for using ~~evaluating~~ compliance history developed by the commission under Section 5.754 and in accordance with the provisions of Subsection (d) of this section;
- (2) whether there is a practical, economic, and feasible alternative to a subsurface area drip dispersal system reasonably available; and
- (3) any other factor the commission considers relevant.

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No equivalent provision.

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

(a) A district may elect to file annual financial reports with the executive director in lieu of the district's compliance with Section 49.191 provided:

- (1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;
- (2) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of \$250,000 [~~\$100,000~~] during the fiscal period; and
- (3) the district's cash and temporary investments were not in excess of \$100,000 at any time during the fiscal period.

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

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

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

- (1) the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards [~~in the lowest classification~~] under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections;
- (2) the permit holder or applicant made a false or misleading statement in connection with an original or renewal

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No equivalent provision.

No equivalent provision.

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

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

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

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

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

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

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

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for using [~~evaluating~~] compliance history developed by the commission under Section 5.754, Water Code. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an

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No equivalent provision.

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environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

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

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

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

No equivalent provision.

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

Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This section applies to a permit amendment application submitted to allow an electric generating facility to comply with Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412), including a requirement to use applicable maximum achievable control

No equivalent provision.

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technology.

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

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

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

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

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

No equivalent provision.

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

(a) The commission, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

- (1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;
- (2) compatibility with present uses of land near the site;
- (3) socioeconomic effects on surrounding communities of

No equivalent provision.

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operation of the licensed activity and of associated transportation of low-level radioactive waste;

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

(5) the applicant's qualifications, including:

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

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

(6) background monitoring plans for the proposed site;

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

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

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

(10) training programs for the applicant's employees;

(11) a monitoring, record-keeping, and reporting program;

(12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;

(13) decommissioning and postclosure care plans;

(14) security plans;

(15) worker monitoring and protection plans;

(16) emergency plans; and

(17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils,

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groundwater, and vegetation.

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

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

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

SECTION 4.11. (a) Not later than September 1, 2012, the Texas Commission on Environmental Quality by rule shall establish the method for evaluating compliance history as required by Section 5.753(a), Water Code, as amended by this article. Until the commission adopts that method, the commission shall continue in effect its current standard for evaluating compliance history.

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

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

(d) The fee applicable to a delivery in Section 26.3574(b), Water Code, as that subsection existed immediately before the effective date of this Act, remains in effect until the Texas Commission on Environmental Quality adopts and implements a fee applicable to that delivery under Section 26.3574(b-1), Water Code, as added by this article.
[FA1(10),(11)]

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

ARTICLE 5. WATER RIGHTS

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

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

- (A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- (C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
- (D) raising or keeping equine animals;
- (E) wildlife management; ~~and~~
- (F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and
- (G) aquaculture, as defined by Section 134.001, Agriculture Code.

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No equivalent provision.

Same as House version.

No equivalent provision.

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

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

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

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

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

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

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

(1) temporarily suspend the right of any person who holds a

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

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

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

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

(g) Subsections (e) and (f) do not affect the authority of a watermaster to obtain water use information under other law.
[FA1(12),(13)]

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

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

(1) temporarily suspend the right of any person who holds a

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water right to use the water, in accordance with the priority of water rights established by Section 11.027; and

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

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

(1) maximizes the beneficial use of water;

(2) minimizes the impact on water rights holders;

(3) prevents the waste of water; and

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

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

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

(2) specifying the:

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

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

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

(3) for drought management measures that may be implemented during times of drought or other emergency

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water right to use the water; and

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

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

(1) maximizes the beneficial use of water;

(2) minimizes the impact on water rights holders;

(3) prevents the waste of water;

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

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

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

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

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

(2) specifying the:

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

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

(C) procedures for notice of, an opportunity for a hearing on, and the appeal to the commission of an order issued under this section. [FA2]

CONFERENCE

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shortage of water, as provided in Subsection (a).

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

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

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

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

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

(e) If the commission receives a request for a hearing before the period for submitting public comments and requesting a hearing expires, the commission shall act on the request for a hearing and, if the request is denied, act on the application not

No equivalent provision.

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later than the 60th day after the date the period expires. If a request for a hearing is not submitted before the period expires, the executive director may act on the application.

SECTION 5.05. Section 11.326, Water Code, is amended by adding Subsections (g) and (h) to read as follows:

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

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

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

(h) The commission shall:

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

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

ARTICLE 6. FUNDING

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

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

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

SECTION 5.03. Same as House version.

Same as House version.

SECTION 6.01. Same as House version. [FA1(14) reverts the substitute to the House engrossed version.]

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- (2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;
- (3) provide an amount to fund local public projects under Section 401.244;
- (4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility; ~~and~~
- (5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules; and
- (6) provide an amount necessary to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

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

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

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

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SECTION 6.02. Same as House version.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The [~~commission shall use the~~] assessments collected under this subsection may be appropriated by a rider to 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** solely to pay costs and expenses incurred by the agency [~~commission~~] in the regulation of

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Code].

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

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

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

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

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

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districts, water supply or sewer service corporations, and public utilities under Chapter 13~~[-Water Code]~~.

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

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

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

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

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

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- (1) Subsection (b), to the extent those fees are paid by water districts, and Subsections (e), (f), and (n);
- (2) ~~[Sections 13.4521 and 13.4522; or~~
~~[~~3~~] Section 54.037(c); or~~
- (3) Section 367.010, Health and Safety Code.

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

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

ARTICLE 7. WATER AND SEWER UTILITIES

SECTION 7.01. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.1325 to read as follows:
Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On request, the state agency with jurisdiction over rates charged by water and sewer utilities shall provide, at a reasonable cost, electronic copies of all information provided to the agency under Sections 13.016, 13.043, and 13.187, to the extent that the information is available electronically and is not confidential.

SENATE VERSION (IE)

- (1) Subsection (b), to the extent those fees are paid by water districts, and Subsections (e), (f), and (n);
- (2) ~~[Sections 13.4521 and 13.4522; or~~
~~[~~3~~] Section 54.037(c); or~~
- (3) Section 367.010, Health and Safety Code. [FA1(15)]

SECTION 6.04. Same as House version.

SECTION __.__. The changes in law made by Section 5.701, Water Code, as amended by this article, apply only to a fee assessed on or after January 1, 2012. A fee assessed before January 1, 2012, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose. [FA1(16)]

Same as House version.

SECTION 7.01. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.1325 to read as follows:
Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On request, the state agency with jurisdiction over rates charged by water and sewer utilities shall provide, at a reasonable cost, electronic copies of all information provided to the agency under Sections 13.016, 13.043, and 13.187 to the extent that the information is available and is not confidential. Copies of all information provided to the agency shall be provided to the Office of

CONFERENCE

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SENATE VERSION (IE)

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Public Utility Counsel, on request, at no cost to the office.
[FA1(17)]

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

Same as House version.

SECTION 8.01. The heading to Chapter 367, Health and
Safety Code, is amended to read as follows:
CHAPTER 367. ON-SITE WASTEWATER TREATMENT
RESEARCH [~~COUNCIL~~]

SECTION 8.01. Same as House version.

SECTION 8.02. Section 367.001, Health and Safety Code, is
amended to read as follows:
Sec. 367.001. DEFINITIONS. In this chapter:
(1) "Commission" means the Texas Commission on
Environmental Quality [~~Natural Resource Conservation
Commission~~].
(2) [~~"Council" means the On-site Wastewater Treatment
Research Council.~~]
[(3)] "On-site wastewater treatment system" means a system
of treatment devices or disposal facilities that:
(A) is used for the disposal of domestic sewage, excluding
liquid waste resulting from the processes used in industrial
and commercial establishments;
(B) is located on the site where the sewage is produced; and
(C) produces not more than 5,000 gallons of waste a day.

SECTION 8.02. Same as House version.

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

SECTION 8.03. Same as House version.

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

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

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

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

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

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

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

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

(1) support applied research and demonstration projects by accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers regarding on-site wastewater treatment

SECTION 8.04. Same as House version.

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technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

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

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

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

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

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

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

SECTION 8.07. Sections 367.002, 367.003, 367.004,

SENATE VERSION (IE)

SECTION 8.05. Same as House version. [FA1(18) reverts the substitute to the House engrossed version.

SECTION 8.06. Same as House version.

SECTION 8.07. Same as House version.

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367.005, 367.006, and 367.011, Health and Safety Code, are repealed.

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

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

ARTICLE 9. RATE NOTIFICATION

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

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

SENATE VERSION (IE)

SECTION 8.08. Same as House version.

No equivalent provision.

No equivalent provision.

CONFERENCE

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SECTION 9.02. Section 13.187(b), Water Code, is amended to read as follows:

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

ARTICLE 10. CONTESTED CASE HEARINGS

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

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

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

(b) At the time an application for a permit or license under this code is filed with the executive director and is

SENATE VERSION (IE)

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

CONFERENCE

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administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license. A state agency that receives notice under this subsection may submit comments to the commission in response to the notice but may not contest the issuance of a permit or license by the commission. For the purposes of this subsection, "state agency" does not include a river authority.

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

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

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

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

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

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

~~[(3) the complexity of the issues presented; and~~

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

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

SENATE VERSION (IE)

No equivalent provision.

CONFERENCE

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

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

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

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

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

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

No equivalent provision.

No equivalent provision.

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

SECTION 10.07. (a) Section 5.115(b), Water Code, as amended by this article, applies only to an application for the issuance, amendment, extension, or renewal of a permit or license that is received by the Texas Commission on Environmental Quality on or after the effective date of this Act. An application that is received before that date is governed by the law in effect at the time the application is received, and the former law is continued in effect for that purpose.

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

ARTICLE 11. EFFECTIVE DATE

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

SENATE VERSION (IE)

No equivalent provision.

No equivalent provision.

ARTICLE 9. Same as House version.

SECTION 9.01. Same as House version.

CONFERENCE