

BILL ANALYSIS

C.S.H.B. 3857
By: Lucio III
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that water and sewer utilities should be encouraged to implement water infrastructure projects that improve reliability, comply with environmental regulations, and create solutions to regional water supply problems. The parties report that the traditional rate recovery process often discourages such projects because of lengthy and expensive contested cases. The parties support streamlined ratemaking to help utilities keep up with water infrastructure needs. C.S.H.B. 3857 seeks to address this goal by proposing new law relating to periodic rate adjustments by water and sewer utilities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 3857 amends the Water Code to authorize the Texas Commission on Environmental Quality (TCEQ), on the petition of a water and sewer utility, to approve a tariff or rate schedule that includes an adjustable rate or charge designed to increase or decrease, without the necessity of a contested case hearing, in proportion to the utility's amount of invested capital committed to infrastructure improvement projects to serve the utility's certificated service area. The bill defines "infrastructure improvement project" as an engineering project to construct, improve, or renovate a facility used and useful for the production, transmission, storage, distribution, or provision of potable or recycled water to the public or the collection, transportation, treatment, or disposal of sewage.

C.S.H.B. 3857 requires a water and sewer utility, to be eligible for a tariff or rate schedule that includes a rate adjustment for an infrastructure project, or to increase or decrease an adjustable rate or charge approved as part of such a tariff or rate schedule, to file with the executive director of TCEQ for review and approval a written petition not later than the 60th day before the proposed effective date, as applicable, of the tariff or rate schedule or of the increase or decrease of the adjustable rate or charge. The bill requires the petition to contain the amount of the proposed rate or charge; the proposed implementation date for the proposed rate or charge; a list of completed, eligible capital projects and the depreciation and return on investment on the projects for which the utility seeks reimbursement through the proposed rate or charge; a computation of the projected total annual increase or decrease in revenue expected from the proposed rate or charge; and the cumulative annual amount the utility expects to recover from the proposed rate or charge.

C.S.H.B. 3857 prohibits the executive director from approving a rate or charge that allows a water and sewer utility to recover more than five percent of the utility's annual revenue. The bill prohibits the executive director, if a water and sewer utility regionalizes or consolidates into a single tariff, from approving a rate or charge that exceeds five percent of the utility's annual revenue from the region or single tariff. The bill prohibits a water and sewer utility from implementing a rate or charge or an increase in a rate or charge more than once in a calendar year.

C.S.H.B. 3857 requires TCEQ by rule to require the water and sewer utility to apply a rate or charge to each customer included in the utility's tariff or rate schedule and to provide to each customer written notice of the rate or charge on the initial tariff filing that proposes to implement the rate or charge. The bill prohibits a water and sewer utility from recovering expenses related to the maintenance and operation of an infrastructure improvement project through a rate or charge under the bill's provisions.

C.S.H.B. 3857 makes a rate or charge approved by TCEQ subject to a true-up or reconciliation at the water and sewer utility's next general rate case under statutory provisions relating to a statement of intent to change rates. The bill prohibits a water and sewer utility that has filed four petitions under the bill's provisions since the utility's most recent general rate case from filing another petition until after the utility's next general rate case.

C.S.H.B. 3857 provides that the implementation of a utility facilities construction and improvement charge or an increase in a utility facilities construction and improvement charge is not subject to a contested case hearing. The bill requires TCEQ to adopt rules to implement the bill's provisions not later than September 1, 2015. The bill requires a regulatory authority other than TCEQ to allow a water and sewer utility to use an adjustable rate or charge in a manner consistent with the bill's provisions and rules adopted under those provisions.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3857 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

Subchapter F, Chapter 13, Water Code, is amended by adding Section 13.193 as follows:

Sec. 13.193. PERIODIC RATE ADJUSTMENTS. (a) The commission or a regulatory authority, on the petition of a water or sewer utility described in Section 13.002(4-a), may approve a tariff or rate schedule in which a nonfuel rate may be periodically adjusted upward or downward, based on changes in the parts of the utility's invested capital that serves the utility's certificated service area, including a facility used for:
(1) the production, transmission, storage, distribution, or provision of potable or recycled water to the public; or
(2) the collection, transportation, treatment, or disposal of sewage.
(b) The utility commission shall adopt rules as necessary to implement Section 13.193, modeled on rules implementing Section 36.210, Utilities Code by September 1, 2015 providing that:
(1) the utility's revenue may not increase or decrease by more than five percent,

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

- (2) the facilities described in the petition have been placed into service by the utility,
- (3) the return on invested capital, depreciation rate, and income tax rate is up to the amount authorized in the utility's most recent rate order,
- (4) does not include the operating expenses associated with the facilities described in the petition,
- (5) the utility has not filed a petition authorized by this section in the prior twelve months,
- (6) the utility has not filed four petitions authorized by this section since the utility's last general rate application filed under Section 13.187(a).

No equivalent provision.

SECTION 1. Subchapter F, Chapter 13, Water Code, is amended by adding Section 13.194 to read as follows:

Sec. 13.194. RATE ADJUSTMENTS FOR INFRASTRUCTURE PROJECTS.

(a) In this section, "infrastructure improvement project" means an engineering project to construct, improve, or renovate a facility used and useful for:

- (1) the production, transmission, storage, distribution, or provision of potable or recycled water to the public; or
- (2) the collection, transportation, treatment, or disposal of sewage.

No equivalent provision

(b) The commission, on the petition of a water and sewer utility, may approve a tariff or rate schedule that includes an adjustable rate or charge designed to increase or decrease, without the necessity of a contested case hearing, in proportion to the utility's amount of invested capital committed to infrastructure improvement projects to serve the utility's certificated service area.

No equivalent provision

(c) To be eligible for a tariff or rate schedule under this section, or to increase or decrease an adjustable rate or charge approved as part of a tariff or rate schedule under this section, a water and sewer utility, not later than the 60th day before the proposed effective date, as applicable, of the tariff or rate schedule or of the increase or decrease of the adjustable

rate or charge, must file with the executive director for review and approval a written petition that contains:

(1) the amount of the proposed rate or charge;

(2) the proposed implementation date for the proposed rate or charge;

(3) a list of completed, eligible capital projects and the depreciation and return on investment on the projects for which the utility seeks reimbursement through the proposed rate or charge;

(4) a computation of the projected total annual increase or decrease in revenue expected from the proposed rate or charge; and

(5) the cumulative annual amount the utility expects to recover from the proposed rate or charge.

No equivalent provision

(d) The executive director may not approve a rate or charge that allows a water and sewer utility to recover more than five percent of the utility's annual revenue. If a water and sewer utility regionalizes or consolidates into a single tariff under Section 13.145, the executive director may not approve a rate or charge that exceeds five percent of the utility's annual revenue from the region or single tariff.

No equivalent provision

(e) A water and sewer utility may not implement a rate or charge or an increase in a rate or charge under this section more than once in a calendar year.

No equivalent provision

(f) The commission by rule shall require the water and sewer utility:

(1) to apply a rate or charge to each customer included in the utility's tariff or rate schedule; and

(2) to provide to each customer written notice of the rate or charge on the initial tariff filing that proposes to implement the rate or charge.

No equivalent provision

(g) A water and sewer utility may not recover expenses related to the maintenance and operation of an infrastructure improvement project through a rate or charge under this section.

No equivalent provision

(h) A rate or charge approved by the commission under this section is subject to a true-up or reconciliation at the water and sewer utility's next general rate case under Section 13.187.

No equivalent provision

(i) A water and sewer utility that has filed four petitions under this section since the utility's most recent general rate case under Section 13.187 may not file another petition until after the utility's next general rate case under that section.

No equivalent provision

(j) Notwithstanding any other provision of this code, the implementation of a utility facilities construction and improvement charge or an increase in a utility facilities construction and improvement charge is not subject to a contested case hearing.

No equivalent provision

(k) The commission shall adopt rules to implement this section.

No equivalent provision

(l) A regulatory authority other than the commission shall allow a water and sewer utility to use an adjustable rate or charge in a manner consistent with this section and rules adopted under this section.

No equivalent provision.

SECTION 2. The commission or regulatory authority shall adopt all rules necessary to implement Section 13.194, Water Code, as added by this Act, not later than September 1, 2015.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2013.