

BILL ANALYSIS

Senate Research Center
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S.B. 2662
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Water, Agriculture and Rural Affairs
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As high economic and population growth rates and persistent drought in Texas have put increasing pressure on groundwater and surface water resources, the ability of public water suppliers to meet customer demand without overpumping their lawful annual water supply authorizations by the Texas Commission on Environmental Quality (TCEQ) or a groundwater conservation district, or pursuant to a wholesale water supply contract, has become more challenging. To address this challenge, the 75th Texas Legislature in 1997 required public water suppliers to prepare drought contingency plans (DCPs) to be able to more effectively reduce customer water use during times of drought via 75(R) S.B. 1.

Unlike public water suppliers that are governmental entities like cities and special districts and can enforce ordinances or rules, investor-owned utilities (IOUs) are private entities with fewer tools to ensure that customers comply with required reductions in water use under their TCEQ-approved DCPs. Consequently, a number of IOUs have failed to limit their overall water production in times of drought to the amount of water they are legally authorized to use, leading to costly litigation and additional strains and impacts on groundwater and surface water resources. Moreover, judges are understandably hesitant to order these water systems to shut down water production even after they have reached their authorized annual water production limits because of public health and safety concerns for residential and commercial customers.

S.B. 2662 addresses this problem by clarifying the statutory authority of IOUs to implement and enforce their DCPs as part of their approved tariffs to reduce customer water use before they reach the point of overpumping their water use authorizations. The bill codifies many of the provisions in the current rules of TCEQ and the Public Utility Commission (PUC) to make clear: (1) that DCPs must be included as part of the IOU's tariff, which is the one thing IOUs can enforce under current law; (2) that DCPs for retail public water suppliers must include procedures for enforcement of mandatory water use restrictions; and (3) that IOUs can discontinue, reduce, or impair retail water service to ensure compliance with their approved DCP. S.B. 2662 also makes clear that the appropriate regulatory authority with oversight over an IOU may compel the IOU to comply with provisions in their approved tariff, including DCP provisions. Lastly, S.B. 2662 includes the PUC as a participant with TCEQ and the Texas Water Development Board in the development of model DCPs and rules identifying quantified target goals for DCPs.

As proposed, S.B. 2662 amends current law relating to the enforcement of drought contingency plans by water and sewer utilities and the Public Utility Commission of Texas.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 5 (Section 11.1272, Water Code) of this bill.

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 5 (Section 11.1272, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.041(a), Water Code, to authorize the Public Utility Commission of Texas (PUC) to regulate and supervise the tariffs of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation and to make a nonsubstantive change.

SECTION 2. Amend Section 13.042(a), Water Code, to make a conforming change.

SECTION 3. Amends Section 13.136(a), Water Code, to require every utility to file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished, including the utility's drought contingency plan required by the Texas Commission on Environmental Quality (TCEQ).

SECTION 4. Amends Sections 13.250(b) and (d), Water Code, as follows:

(b) Prohibits the holder of a certificate or a person who possesses facilities used to provide utility service, unless the PUC issues a certificate that neither the present nor future convenience and necessity will be adversely affected, from discontinuing, reducing, or impairing service to a certified service area or part of a certified service area except for under certain reasons, including compliance with a drought contingency plan. Makes nonsubstantive changes.

(d) Makes conforming and nonsubstantive changes.

SECTION 5. Amends Section 11.1272, Water Code, by amending Subsections (c), (d), and (e) and adding Subsection (c-1), as follows:

(c) Requires that a drought contingency plan required by TCEQ rule adopted under Section 11.1272 (Additional Requirement: Drought Contingency Plans for Certain Applicants and Water Right Holders) include certain criteria, including procedures for the enforcement of mandatory water use restrictions, including fines, water rate surcharges, restriction of service, discontinuation of service, or any other penalty.

Deletes existing text providing that by May 1, 2005, a drought contingency plan required by TCEQ rule adopted under this section is required to include certain criteria. Makes nonsubstantive changes.

(c-1) Requires the entity preparing the drought contingency plan to establish the targets and enforcement procedures required under Subsection (c).

(d) Requires TCEQ, the PUC, and the Texas Water Development Board (TWDB) by joint rule to identify quantified target goals for drought contingency plans that wholesale and retail public water suppliers, irrigation districts, and other entities are authorized to use as guidelines in preparing drought contingency plans.

(e) Requires TCEQ, the PUC, and TWDB to develop and update at least once every five years model drought contingency programs for different types of water suppliers that suggest best management practices for accomplishing the highest practicable levels of water use reductions achievable during periods of water shortages and drought for each specific type of water supplier.

SECTION 6. Effective date: upon passage or September 1, 2025.