

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/24/2011

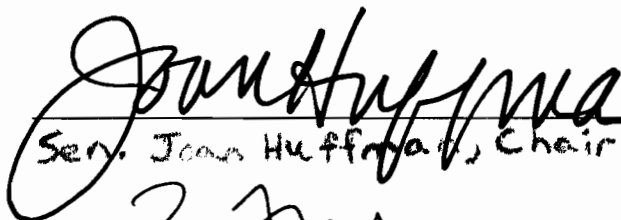
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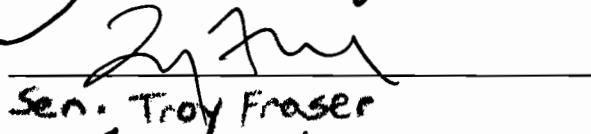
Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

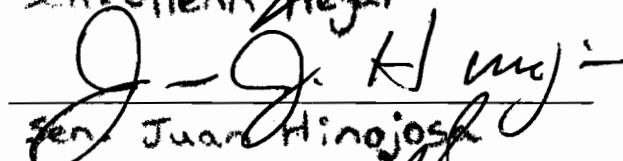
Sirs:

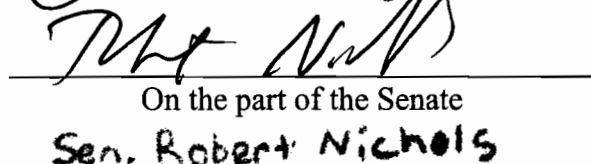
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill 2694 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

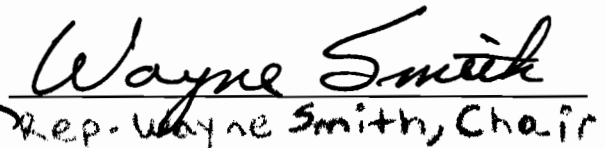

Sen. Jean Huffman, Chair

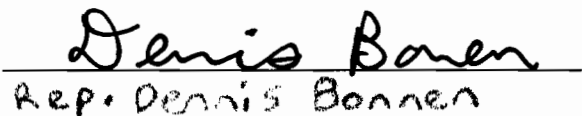

Sen. Troy Fraser

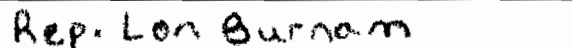

Sen. Glenn Hegar

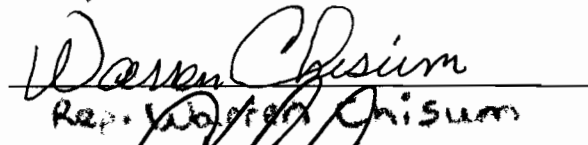

Sen. Juan Hinojosa

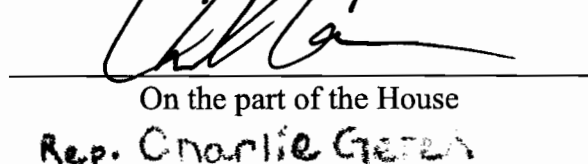

On the part of the Senate
Sen. Robert Nichols


Rep. Wayne Smith, Chair


Rep. Dennis Bonnen


Rep. Lon Burnam


Rep. Warren Chisum


On the part of the House
Rep. Charlie Geren

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2694

A BILL TO BE ENTITLED

AN ACT

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

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

ARTICLE 1. GENERAL PROVISIONS

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

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

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

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

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

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

1 the person is considered to have resigned from the office and
2 the office immediately becomes vacant. The vacancy shall be
3 filled in the manner provided by law.

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

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

9 (1) negotiated rulemaking procedures under Chapter
10 2008, Government Code, for the adoption of commission rules; and

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

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

20 (c) The commission shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 SECTION 1.07. Section 12.052, Water Code, is amended by
19 amending Subsection (a) and adding Subsections (b-1), (e-1), (e-
20 2), and (e-3) to read as follows:

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

27 (b-1) The commission may enter into an agreement with an

1 owner of a dam who is required to reevaluate the adequacy of an
2 existing dam or spillway. The agreement may include timelines
3 to achieve compliance with the commission's design criteria and
4 may authorize deferral of compliance with the criteria, as
5 appropriate.

6 (e-1) The commission shall exempt an owner of a dam
7 located on private property from meeting requirements related to
8 dam safety if the dam:

9 (1) at maximum capacity impounds less than 500 acre-
10 feet;

11 (2) has a hazard classification of low or
12 significant;

13 (3) is located in a county with a population of less
14 than 215,000; and

15 (4) is not located inside the corporate limits of a
16 municipality.

17 (e-2) Notwithstanding Subsection (e-1), an owner of a dam
18 shall comply with operation and maintenance requirements
19 established by commission rule.

20 (e-3) This subsection and Subsections (e-1) and (e-2)
21 expire August 31, 2015.

22 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD

23 COMMISSION

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

26 Sec. 91.011. CASING. (a) Before drilling into the oil or
27 gas bearing rock, the owner or operator of a well being drilled

1 for oil or gas shall encase the well with good and sufficient
2 wrought iron or steel casing or with any other material that
3 meets standards adopted by the commission, particularly where
4 wells could be subjected to corrosive elements or high pressures
5 and temperatures, in a manner and to a depth that will exclude
6 surface or fresh water from the lower part of the well from
7 penetrating the oil or gas bearing rock, and if the well is
8 drilled through the first into the lower oil or gas bearing
9 rock, the well shall be cased in a manner and to a depth that
10 will exclude fresh water above the last oil or gas bearing rock
11 penetrated.

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

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

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

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

24 (c) The commission shall charge a fee not to exceed \$75,
25 in addition to the fee required by Subsection (b), for
26 processing a request to expedite a letter of determination.
27 Money collected under this subsection may be used to study and

1 evaluate electronic access to geologic data and surface casing
2 depths under Section 91.020.

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

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

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

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

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

19 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
20 ~~DIRECTOR~~]. A person making application to the railroad
21 commission for a permit under this chapter shall submit with the
22 application a letter of determination from the railroad
23 commission [~~from the executive director~~] stating that drilling
24 and using the disposal well and injecting oil and gas waste into
25 the subsurface stratum will not endanger the freshwater strata
26 in that area and that the formation or stratum to be used for
27 the disposal is not freshwater sand.

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

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

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

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

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

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

26 SECTION 2.08. (a) The Railroad Commission of Texas shall
27 adopt rules to implement the changes in law made by this article

1 not later than March 1, 2012.

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

7 ARTICLE 3. PUBLIC INTEREST

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

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

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

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

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

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

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

25 Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE
26 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public
27 interest counsel is created to ensure that the commission

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

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

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

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

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

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

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

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

26 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

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

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

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

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

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

10 ARTICLE 4. COMPLIANCE AND ENFORCEMENT

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

13 Sec. 5.751. APPLICABILITY. This subchapter applies to
14 programs under the jurisdiction of the commission under Chapters
15 26, ~~[and]~~ 27, and 32 of this code and Chapters 361, 375, 382,
16 and 401, Health and Safety Code. It does not apply to
17 occupational licensing programs under the jurisdiction of the
18 commission.

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

21 (1) "Applicable legal requirement" means an
22 environmental law, regulation, permit, order, consent~~[r]~~ decree,
23 or other requirement.

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

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

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

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

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

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

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

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

23 (4) changes in ownership.

24 (d) Except as provided by this subsection, notices of
25 violation must be included as a component of compliance history
26 for a period not to exceed one year from the date of issuance of
27 each notice of violation. The listing of a notice of violation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (3) consider:

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

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

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

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

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

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

27 (2) enforcement;

1 (3) the use of announced inspections; and

2 (4) participation in innovative programs.

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

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

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

17 [~~(1) receiving an announced inspection; and~~

18 [~~(2)~~] obtaining or renewing a flexible permit under
19 the program administered by the commission under Chapter 382,
20 Health and Safety Code, or participating in the regulatory
21 flexibility program administered by the commission under Section
22 5.758.

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

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

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

1 and

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

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

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

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

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

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

21 (2) not inconsistent with federal law.

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

1 ~~environmental quality that will result from the project the~~
2 ~~applicant proposes].~~

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

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

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

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

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

17 (4) work to achieve consistent and predictable
18 results for the regulated community and shorter waits for permit
19 issuance.

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

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

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

1 to prevent the economic benefit of noncompliance.

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

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

7 (a) The amount of the penalty for a violation of Chapter
8 37 of this code, Chapter 366, 371, or 372, Health and Safety
9 Code, or Chapter 1903, Occupations Code, may not exceed \$5,000
10 [~~\$2,500~~] a day for each violation.

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

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

16 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The
17 commission may compromise, modify, or remit, with or without
18 conditions, an administrative penalty imposed under this
19 subchapter. In determining the appropriate amount of a penalty
20 for settlement of an administrative enforcement matter, the
21 commission may consider a respondent's willingness to contribute
22 to supplemental environmental projects that are approved by the
23 commission, giving preference to projects that benefit the
24 community in which the alleged violation occurred. The
25 commission may encourage the cleanup of contaminated property
26 through the use of supplemental environmental projects. The
27 commission may approve a supplemental environmental project with

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

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

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

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

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

23 (3) the need for corrective action.

24 (b) In this section:

25 (1) "Local government" means a school district,
26 county, municipality, junior college district, river authority,
27 water district or other special district, or other political

1 subdivision created under the constitution or a statute of this
2 state.

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

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

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

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

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

23 (1) the applicant is not applying to:

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

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

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

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

9 (4) the commission determines that an applicant's
10 compliance history under the method for using [~~evaluating~~]
11 compliance history developed by the commission under Section
12 5.754 raises no issues regarding the applicant's ability to
13 comply with a material term of its permit.

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

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

1 system" has the meaning assigned by Section 5.127.

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

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

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

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

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

27 (1) a valid paper delivery certificate presented by

1 the owner or operator of the underground storage tank or
2 displayed at the facility associated with the underground
3 storage tank;

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

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

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

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

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

18 (2) is out of service;

19 (3) presents a contamination risk; and

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

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

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

26 (2) the assessment of the potential risk of
27 contamination from the site.

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

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

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

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

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

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

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

1 1).

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

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

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

15 (2) not more than \$7.50 for each delivery into a
16 cargo tank having a capacity of 2,500 gallons or more but less
17 than 5,000 gallons [~~for the state fiscal year beginning~~
18 ~~September 1, 2007, through the state fiscal year ending August~~
19 ~~31, 2011]~~;

20 (3) not more than \$11.75 for each delivery into a
21 cargo tank having a capacity of 5,000 gallons or more but less
22 than 8,000 gallons [~~for the state fiscal year beginning~~
23 ~~September 1, 2007, through the state fiscal year ending August~~
24 ~~31, 2011]~~;

25 (4) not more than \$15.00 for each delivery into a
26 cargo tank having a capacity of 8,000 gallons or more but less
27 than 10,000 gallons [~~for the state fiscal year beginning~~

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

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

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

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

16 (g) Notwithstanding the other provisions of this chapter,
17 the commission, after hearing, shall deny or suspend
18 authorization for the use of an injection well under a general
19 permit if the commission determines that the owner's compliance
20 history is classified as unsatisfactory according to commission
21 standards ~~[in the lowest classification]~~ under Sections 5.753
22 and 5.754 and rules adopted and procedures developed under those
23 sections. A hearing under this subsection is not subject to the
24 requirements relating to a contested case hearing under Chapter
25 2001, Government Code.

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

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

5 (1) compliance history of the applicant and related
6 entities under the method for using ~~[evaluating]~~ compliance
7 history developed by the commission under Section 5.754 and in
8 accordance with the provisions of Subsection (e);

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

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

23 (A) covers the injection well; and

24 (B) is issued by a company that is authorized to
25 do business and to write that kind of insurance in this state
26 and is solvent and not currently under supervision or in
27 conservatorship or receivership in this state or any other

1 state.

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

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

7 (1) compliance history of the applicant and related
8 entities under the method for using ~~[evaluating]~~ compliance
9 history developed by the commission under Section 5.754 and in
10 accordance with the provisions of Subsection (d) of this
11 section;

12 (2) whether there is a practical, economic, and
13 feasible alternative to a subsurface area drip dispersal system
14 reasonably available; and

15 (3) any other factor the commission considers
16 relevant.

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

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

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

25 (2) the district did not have gross receipts from
26 operations, loans, taxes, or contributions in excess of \$250,000
27 ~~[\$100,000]~~ during the fiscal period; and

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

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

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

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

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

20 (2) the permit holder or applicant made a false or
21 misleading statement in connection with an original or renewal
22 application, either in the formal application or in any other
23 written instrument relating to the application submitted to the
24 commission, its officers, or its employees;

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

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

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

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

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

15 SECTION 4.25. Section 382.0518(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) In considering the issuance, amendment, or renewal of
18 a permit, the commission may consider the applicant's compliance
19 history in accordance with the method for using [~~evaluating~~]
20 compliance history developed by the commission under Section
21 5.754, Water Code. In considering an applicant's compliance
22 history under this subsection, the commission shall consider as
23 evidence of compliance information regarding the applicant's
24 implementation of an environmental management system at the
25 facility for which the permit, permit amendment, or permit
26 renewal is sought. In this subsection, "environmental
27 management system" has the meaning assigned by Section 5.127,

1 Water Code.

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

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

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

14 Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT
15 APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a)
16 This section applies to a permit amendment application submitted
17 solely to allow an electric generating facility to reduce
18 emissions and comply with a requirement imposed by Section 112
19 of the federal Clean Air Act (42 U.S.C. Section 7412) to use
20 applicable maximum achievable control technology. A permit
21 amendment application shall include a condition that the
22 applicant is required to complete the actions needed for
23 compliance by the time allowed under Section 112 of the federal
24 Clean Air Act (42 U.S.C. Section 7412).

25 (b) The commission shall provide an opportunity for a
26 public hearing and the submission of public comment on the
27 application in the manner provided by Section 382.0561.

1 (c) Not later than the 45th day after the date the
2 application is received, the executive director shall issue a
3 draft permit.

4 (d) Not later than the 30th day after the date of issuance
5 of the draft permit under Subsection (c), parties may submit to
6 the commission any legitimate issues of material fact regarding
7 whether the choice of technology approved in the draft permit is
8 the maximum achievable control technology required under Section
9 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and
10 may request a contested case hearing before the commission. If
11 a party requests a contested case hearing under this subsection,
12 the commission shall conduct a contested case hearing and issue
13 a final order issuing or denying the permit amendment not later
14 than the 120th day after the date of issuance of the draft
15 permit under Subsection (c).

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

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

22 (g) This section expires on the sixth anniversary of the
23 date the administrator adopts standards for existing electric
24 generating facilities under Section 112 of the federal Clean Air
25 Act (42 U.S.C. Section 7412), unless a stay of the rules is
26 granted.

27 (h) The commission shall adopt rules to implement this

1 section.

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

4 (a) In making a determination whether to grant, deny,
5 amend, renew, revoke, suspend, or restrict a license or
6 registration, the commission may consider an applicant's or
7 license holder's technical competence, financial qualifications,
8 and compliance history under the method for using ~~[evaluation~~
9 ~~of]~~ compliance history developed by the commission under Section
10 5.754, Water Code.

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

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

16 (1) site suitability, geological, hydrological, and
17 meteorological factors, and natural hazards;

18 (2) compatibility with present uses of land near the
19 site;

20 (3) socioeconomic effects on surrounding communities
21 of operation of the licensed activity and of associated
22 transportation of low-level radioactive waste;

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

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

27 (A) financial and technical qualifications and

1 compliance history under the method for using [~~evaluation of~~]
2 compliance history developed by the commission under Section
3 5.754, Water Code, for an application to the commission; and

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

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

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

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

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

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

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

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

22 (13) decommissioning and postclosure care plans;

23 (14) security plans;

24 (15) worker monitoring and protection plans;

25 (16) emergency plans; and

26 (17) a monitoring program for applicants that
27 includes prelicense and postlicense monitoring of background

1 radioactive and chemical characteristics of the soils,
2 groundwater, and vegetation.

3 SECTION 4.30. Not later than the 180th day after the
4 effective date of this Act, the Texas Commission on
5 Environmental Quality shall adopt rules to implement Section
6 382.059, Health and Safety Code, as added by this article.

7 SECTION 4.31. (a) Not later than September 1, 2012, the
8 Texas Commission on Environmental Quality by rule shall
9 establish the method for evaluating compliance history as
10 required by Section 5.753(a), Water Code, as amended by this
11 article. Until the commission adopts that method, the
12 commission shall continue in effect its current standard for
13 evaluating compliance history.

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

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

27 (d) The fee applicable to a delivery in Section

1 26.3574(b), Water Code, as that subsection existed immediately
2 before the effective date of this Act, remains in effect until
3 the Texas Commission on Environmental Quality adopts and
4 implements a fee applicable to that delivery under Section
5 26.3574(b-1), Water Code, as added by this article.

6 SECTION 4.32. Section 49.198(a), Water Code, as amended by
7 this article, applies to a district that files its annual
8 financial report on or after the effective date of this Act. A
9 district that files its annual financial report before the
10 effective date of this Act is governed by the law in effect on
11 the date the report is filed, and that law is continued in
12 effect for that purpose.

13 ARTICLE 5. WATER RIGHTS

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

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

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

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

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

1 (D) raising or keeping equine animals;

2 (E) wildlife management; ~~and~~

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

7 (G) aquaculture, as defined by Section 134.001,
8 Agriculture Code.

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

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

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

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

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

26 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)
27 During a period of drought or other emergency shortage of water,

1 as defined by commission rule, the executive director by order
2 may, in accordance with the priority of water rights established
3 by Section 11.027:

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

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

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

10 (1) maximizes the beneficial use of water;

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

12 (3) prevents the waste of water;

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

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

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

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

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

26 (2) specifying the:

27 (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.

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

1 review is tolled until the date the executive director receives
2 the requested information from the applicant.

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

6 (e) If the commission receives a request for a hearing
7 before the period for submitting public comments and requesting
8 a hearing expires, the commission shall act on the request for a
9 hearing and, if the request is denied, act on the application
10 not later than the 60th day after the date the period expires.
11 If a request for a hearing is not submitted before the period
12 expires, the executive director may act on the application.

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

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

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

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

22 (h) The commission shall:

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

25 (2) include the findings and recommendations under
26 Subsection (g) in the commission's biennial report to the
27 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;

(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.

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

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

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

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

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

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

21 (A) A public utility as defined in Section
22 13.002 [~~of this code~~] shall collect from each retail customer a
23 regulatory assessment equal to one percent of the charge for
24 retail water or sewer service.

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

1 of one percent of the charge for retail water or sewer service.

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

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

10 (3) The ~~[commission shall use the]~~ assessments
11 collected under this subsection may be appropriated by a rider
12 to the General Appropriations Act to an agency with duties
13 related to water and sewer utility regulation or representation
14 of residential and small commercial consumers of water and sewer
15 utility services solely to pay costs and expenses incurred by
16 the agency ~~[commission]~~ in the regulation of districts, water
17 supply or sewer service corporations, and public utilities under
18 Chapter 13~~[, Water Code]~~.

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

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

1 providers.

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

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

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

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

25 (2) ~~[Sections 13.4521 and 13.4522; or~~

26 ~~[43)]~~ Section 54.037(c); or

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

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

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

9 ARTICLE 7. WATER AND SEWER UTILITIES

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

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

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

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

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

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

1 Sec. 367.001. DEFINITIONS. In this chapter:

2 (1) "Commission" means the Texas Commission on
3 Environmental Quality [~~Natural Resource Conservation~~
4 ~~Commission~~].

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

7 [~~(3)~~] "On-site wastewater treatment system" means a
8 system of treatment devices or disposal facilities that:

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

12 (B) is located on the site where the sewage is
13 produced; and

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

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

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

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

26 [~~(c)~~] The commission [~~council~~] may accept grants and
27 donations from other sources to supplement the fees collected

1 under Section 367.010. Grants and donations shall be deposited
2 to the credit of the water resource management [~~on-site~~
3 ~~wastewater treatment research~~] account and may be disbursed as
4 the commission [~~council~~] directs and in accordance with Section
5 367.008.

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

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

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

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

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

18 (1) support applied research and demonstration
19 projects by accredited colleges and universities in this state,
20 by other governmental entities, or by acceptable public or
21 private research centers regarding on-site wastewater treatment
22 technology and systems applicable to this state that are
23 directed toward improving the quality of wastewater treatment
24 and reducing the cost of providing wastewater treatment to
25 consumers; and

26 (2) enhance technology transfer regarding on-site
27 wastewater treatment by using educational courses, seminars,

1 symposia, publications, and other forms of information
2 dissemination.

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

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

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

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

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

22 SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,
23 367.006, and 367.011, Health and Safety Code, are repealed.

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

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

5 ARTICLE 9. RATE NOTIFICATION

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

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

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

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

26 ARTICLE 10. CONTESTED CASE HEARINGS

27 SECTION 10.01. Section 5.115(b), Water Code, is amended to

1 read as follows:

2 (b) At the time an application for a permit or license
3 under this code is filed with the executive director and is
4 administratively complete, the commission shall give notice of
5 the application to any person who may be affected by the
6 granting of the permit or license. A state agency that receives
7 notice under this subsection may submit comments to the
8 commission in response to the notice but may not contest the
9 issuance of a permit or license by the commission. For the
10 purposes of this subsection, "state agency" does not include a
11 river authority.

12 SECTION 10.02. Sections 5.228(c) and (d), Water Code, are
13 amended to read as follows:

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

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

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

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

SECTION 10.03. Subchapter H, Chapter 5, Water Code, is amended by adding Section 5.315 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.

SECTION 10.04. Section 5.228(e), Water Code, is repealed.

SECTION 10.05. (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

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

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

6 ARTICLE 11. EFFECTIVE DATE

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

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SECTION 1.01. Amends the heading of Chapter 5, Water Code. Changes “Texas Natural Resource Conservation Commission” to “Texas Commission on Environmental Quality”.	SECTION 1.01. Same as House version.	SECTION 1.01. Same as House version.
SECTION 1.02. Amends Section 5.014, Water Code. Changes “Texas Natural Resource Conservation Commission” to “Texas Commission on Environmental Quality”. Changes TCEQ’s Sunset date from 2011 to 2023, continuing the agency for 12 years.	SECTION 1.02. Same as House version.	SECTION 1.02. Same as House version.
SECTION 1.03. Amends Chapter 5, Subchapter C of the Water Code by adding Section 5.061. Prohibits a member of the Commission from accepting any campaign contributions for election to an elected office. Provides that if a member of the Commission accepts a campaign contribution, then the member is considered to have resigned from the Commission and the seat is considered vacant, to be filled in accordance with law.	SECTION 1.03. Same as House version.	SECTION 1.03. Same as House version.
SECTION 1.04. Amends Chapter 5, Subchapter D of the Water Code by adding Section 5.1031. Adds Standard Sunset language that requires the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.	SECTION 1.04. Same as House version.	SECTION 1.04. Same as House version.
SECTION 1.05. Amends Section 5.2291(b), Water Code. Provides that TCEQ does not have to comply with the	No equivalent provision.	SECTION 1.05. Same as House version.

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procedures for professional service contracts contained in the Government Code if the contract is for petroleum storage tank remediation work, as provided for by new Section 5.2292, Water Code.

SECTION 1.06. Amends Chapter 5, Subchapter F, Water Code by adding Section 5.2292.

Section 5.2292(a). Allows the executive director to directly contract with a person for scientific and technical environmental services if the contract is for a remediation site that is moving from the petroleum storage tank reimbursement program to the state-lead program, the person is registered to perform corrective action under law, the person is eligible to receive a contract from the state, the person was performing work at the reimbursement site on or before July 1, 2011, and the contract includes all required provisions for state contracts.

Section 5.2292(b). Allows the executive director to directly contract with a person for engineering services, without adhering to the requirements in §2254.004, Government Code, if the contract is for a remediation site that is moving from the petroleum storage tank reimbursement program to the state-lead program, the person is a licensed engineer, the person is registered to perform corrective action under law, the person is eligible to receive a contract from the state, the person was performing work at the reimbursement site on or before

No equivalent provision.

SECTION 1.06. Same as House version.

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July 1, 2011, and the contract includes all required provisions for state contracts.

Section 5.2292(c). Provides that the executive director is not required to enter into a contract, and that nothing prevents the executive director from negotiating contract terms.

SECTION 1.07. Amends Section 12.052, Water Code by amending (a) and adding new (b-1) and (e-1).

Section 12.052(a). Requires TCEQ focus its efforts on the most hazardous dams in the state in implementing its dam safety regulations.

Section 12.052(b-1). Authorizes TCEQ to enter into a compliance agreement with a dam owner who is required to reevaluate the adequacy of an existing dam because of a hazard reclassification by TCEQ. Allows the compliance agreement to include timeframes to bring the dam into compliance with the hydrologic and hydraulic criteria and could include compliance deferral, if the Commission determined that it was appropriate to defer compliance with TCEQ's criteria. *(House Floor Amendment 1 by Smith of Harris)*

Section 12.052(e-1). (e-1) The commission shall exempt dams that impound 1,000 acre-feet or less from meeting requirements related to dam safety. (House Floor

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SECTION 1.05. Amends Section 12.052, Water Code by amending (a) and adding new (b-1).

Same as House version.

Same as House version.

No equivalent provision.

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SECTION 1.07.

Same as House version.

Same as House version.

(e-1) The commission shall exempt an owner of a dam located on private property from meeting requirements related to dam safety if the dam:

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Amendment 20 by Geren)

(1) at maximum capacity impounds less than 500 acre-feet;
(2) has a hazard classification of low or significant;
(3) is located in a county with a population of less than 215,000; and
(4) is not located inside the corporate limits of a municipality.
(e-2) Notwithstanding Subsection (e-1), an owner of a dam shall comply with operation and maintenance requirements established by commission rule.
(e-3) This subsection and Subsections (e-1) and (e-2) expire August 31, 2015.

SECTION 2.01. Amends Section 91.011, Natural Resources Code. Requires the Railroad Commission to adopt rules regarding the depth of well casings necessary for oil and gas wells.

SECTION 2.01. Same as House version.

SECTION 2.01. Same as House version.

SECTION 2.02. Amends Chapter 91, Subchapter B, Natural Resources Code, by adding Section 91.0115. provides for a letter of determination related to surface casing requirements that are protective of water from the Railroad Commission as a permitting requirement for oil and gas wells. Authorizes the Railroad Commission to charge a fee for groundwater protection determinations for oil and gas wells. Requires the Railroad Commission to charge a fee, not to exceed \$75, for an expedited

SECTION 2.02. Same as House version.

SECTION 2.02. Same as House version.

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determination letter for oil and gas wells. Specifies that money collected for processing expedited letters may be used to study and evaluate electronic access to geologic data and surface casing depths.

SECTION 2.03. Amends Chapter 91, Subchapter B, Natural Resources Code, by adding Section 91.020. Makes the Railroad Commission responsible working with other state agencies to study and evaluate electronic access to geologic data and surface casing depths.

SECTION 2.04. Amends Chapter 91, Subchapter D, Natural Resources Code, by adding Section 91.1015. Requires the Railroad Commission to adopt rules to establish groundwater protection requirements for operations within the Commission's jurisdiction.

SECTION 2.05. Amends Section 27.033, Water Code. Provides that a person applying for a permit to inject oil and gas waste must submit a letter of determination from the Railroad Commission stating that the drilling will not endanger freshwater strata and that the formation or stratum is not freshwater sand.

SECTION 2.06. Amends Section 27.046, Water Code. Prohibits the Railroad Commission from issuing a permit for injection wells for geologic storage of anthropogenic carbon dioxide until it issues a letter of determination

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SECTION 2.03. Same as House version.

SECTION 2.___. Same as House version.

SECTION 2.04. Same as House version.

SECTION 2.05. Same as House version.

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SECTION 2.03. Same as House version.

SECTION 2.04. Same as House version.

SECTION 2.05. Same as House version.

SECTION 2.06. Same as House version.

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stating that the drilling will not injure freshwater strata and that the formation or stratum is not freshwater sand. Provides the factors that the Railroad Commission must review in making such a determination, and requires the Railroad Commission to adopt rules.

SECTION 2.07. Repeals Section 5.701(r), Water Code. Removes language authorizing TCEQ to charge a fee for an expedited letter, which is transferred to the Railroad Commission in SECTION 2.02 of the bill.

SECTION 2.08. Instructional Provision. Provides for the transfer of functions to the Railroad Commission and requiring the Railroad Commission to adopt rules by March 1, 2012.

SECTION 3.01. Amends Chapter 5, Subchapter F, Water Code, by adding Section 5.239. Charges the Executive Director with ensuring that the agency is responsive to environmental and citizen concerns, including environmental quality and consumer protection. Charges the Executive Director with creating a program to provide a centralized point for the public to access information, and to identify, assess, and respond to concerns.

SECTION 3.02. Amends Section 5.271, Water Code. Removes the responsibility of ensuring that the Commission is responsive to environmental and citizen

SECTION 2.06. Same as House version.

SECTION 2.07. Same as House version.

SECTION 3.01. Same as House version.

SECTION 3.02. Same as House version.

SECTION 2.07. Same as House version.

SECTION 2.08. Same as House version.

SECTION 3.01. Same as House version.

SECTION 3.02. Same as House version.

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concerns, including environmental quality and consumer protection, from the Office of Public Interest Counsel. Provides that the Office of Public Interest Counsel’s primary duty is to represent the public interest as a party in matters before the Commission.

SECTION 3.03. Amends Chapter 5, Subchapter G, Water Code, by adding Section 5.2725. Requires the Office of Public Interest Counsel to annually report, in a public meeting, to the Commission on the Office’s performance, budget needs, and legislative and regulatory recommendations, for inclusion in relevant Commission reports. Requires the Commission and the Office to work together to identify performance measures for the Office.

SECTION 3.04. Amends Chapter 5, Subchapter G, Water Code, by adding Section 5.276. Requires the Commission to define, by rule, factors OPIC must consider in representing the public interest as a party to a commission proceeding. Provides that the rules must include factors to determine the nature and extent of the public interest and factors to consider in prioritizing the Office’s workload. Requires the Commission, in adopting the rule, to consider recommendations from the Office.

SECTION 4.01. Amends Section 5.751, Water Code. Applies TCEQ’s compliance history program to subsurface area drip dispersal systems; and programs for removing,

SECTION 3.03. Same as House version.

SECTION 3.04. Same as House version.

No equivalent provision.

SECTION 3.03. Same as House version.

SECTION 3.04. Same as House version.

SECTION 4.01. Same as House version.

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collecting, and recovering convenience switches from end-of-life vehicles.

SECTION 4.02. Amends Section 5.752(1), Water Code. Makes a technical correction to the definition of applicable legal requirements to consent decree.

SECTION 4.03. Amends the heading to Section 5.753, Water Code. Changes “STANDARD FOR EVALUATING COMPLIANCE HISTORY.” to “STANDARDS FOR EVALUATING AND USING COMPLIANCE HISTORY.”

SECTION 4.04. Amends Section 5.753, Water Code by amending Subsections (a), (b) and (d) and adding Subsection (d-1).

Subsection (a). Removes the requirement for a “uniform standard” for compliance history and requires the Commission to develop *standards for evaluating and using* compliance history to be applied consistently. Authorizes TCEQ to account for differences among regulated entities.

No equivalent provision.

Subsection (b). Removes the requirement to include

No equivalent provision.

No equivalent provision.

SECTION 4.01. Amends Section 5.753, Water Code by amending Subsections (a) and (b) and adding (d-1).

Subsection (a). Removes the requirement for a “uniform standard” for compliance history and requires TCEQ to develop *a method for evaluating* compliance history to be applied consistently. Authorizes TCEQ to account for differences among regulated entities.

Subsection (b). Excepts enforcement orders issued without punitive sanctions from the required components of compliance history.

No equivalent provision.

SECTION 4.02. Same as House version.

SECTION 4.03. Same as House version.

SECTION 4.04.

Same as House version.

Same as House version.

Same as House version.

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consent decrees, criminal convictions of the federal government related to compliance with legal requirements of the Environmental Protection Agency (EPA) in the components of compliance history. Requires the components of compliance history to include, to the extent they are readily available, consent decrees and criminal convictions relating to violations of EPA rules, and takes out the requirement to include criminal convictions relating to violations of EPA laws and laws of other states, if they are available.

Subsection (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.

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No equivalent provision.

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(d) Except as otherwise provided by this subsection, notices of violation must be included as a component of compliance history for a period not to exceed one year from the date of issuance of each notice of violation. The listing of a notice of violation 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.

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Subsection (d-1). Prohibits the Commission, for the purposes of listing compliance history, from including as a notice of violation information received by the Commission as required by Title V of the federal Clean Air Act, unless the Commission issues a written Notice of Violation. deviations or violations reported to the Commission by a person, unless the Commission issues a written notice of violation. Authorizes the Commission to consider final enforcement orders or judgments resulting from self-reported Title V deviations or violations as compliance history components in determining compliance history.

No equivalent provision.

Same as House version.

No equivalent provision. *(House Floor Amendment 13 by Smith of Harris)*

Subsection (d-1). Expands the statutory components for compliance history to authorize, but not require, TCEQ to consider other factors in evaluating compliance history, including, but not limited to, positive compliance factors, complexity (including complexity of regulatory requirements and severity of noncompliance), and enforcement orders without punitive sanctions.

Same as House version.

SECTION 4.05. Amends Section 5.754, Water Code by amending Subsections (a), (b), (c), (d), (e), (g), and (h) and adding Subsection (e-1).

SECTION 4.02. Amends 5.754(d), Water Code.

SECTION 4.05.

Subsection (a). Requires the Commission to establish a set of standards for classification of compliance history in rule as a means of evaluating compliance history. Authorizes the Commission to consider the person's compliance

No equivalent provision.

Same as House version.

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history classification when using compliance history in regulatory actions.

Subsection (b). Changes the classification categories required to be in rule relating to standards for classification of compliance history, from "poor" performers to "unsatisfactory" performers, and defines unsatisfactory as performing below minimal acceptable performance standards established by the Commission. Changes the classification of "average" performers to "satisfactory" performers, and defines high performers as regulated entities that have an above-satisfactory compliance record. Authorizes the Commission, in the rules establishing the standards for classification of compliance history, to establish a category of unclassified performers or regulated entities for which the Commission does not have adequate information, and requires the Commission to 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 federal Title V requirements.

No equivalent provision.

Same as House version.

Subsection (c). Requires the Commission, in classifying a person's compliance history, to establish criteria for classifying a repeat violator giving consideration to the size 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, instead of considering the number and complexity of facilities owned or operated by the person as

No equivalent provision.

Same as House version.

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is currently required in law. Requires the Commission, in classifying a person’s compliance history, to consider the size and complexity of the site, including whether the site is subject to federal Title V requirements, and to consider the potential for a violation at the site that is attributable to the nature and complexity of the site.		
Subsection (d). Removes the requirement to assess the compliance history of entities for which TCEQ does not have adequate compliance information, but continues to authorize TCEQ to require a compliance inspection.	Same as House version.	Same as House version.
Subsection (e). Removes the requirement that the Commission by rule shall provide for the use of compliance history classifications in regulatory decisions and instead requires the Commission to provide for the use of compliance history in regulatory decisions.	No equivalent provision.	Same as House version.
Subsection (e-1). <u>The amount of the penalty enhancement or escalation attributed to compliance history may not exceed 100 percent 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.</u>	No equivalent provision.	<u>(e-1) The amount of the penalty enhancement or escalation attributed to compliance history may not exceed 100 percent of the base penalty for an individual violation as determined by the commission's penalty policy.</u>
Subsection (g). Make a conforming change consistent with the change in classification categories from lowest classification to classified as unsatisfactory according to Commission standards.	No equivalent provision.	Same as House version.

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Subsection (h). Removes language that prohibited the Commission from performing announced inspections for person's whose compliance history is classified as the lowest classification, and makes a conforming change related to changing lowest classification to classified as unsatisfactory according to Commission standards. (*House Floor Amendment 13 by Smith of Harris*)

No equivalent provision.

Same as House version.

SECTION 4.06. Amends Section 5.755(b), Water Code. Requires the Commission's strategically directed regulatory structure rules to include incentives based on a person's compliance history, instead of a person's compliance history "classification".

No equivalent provision.

SECTION 4.06. Same as House version.

SECTION 4.07. Amends Section 5.756, Water Code by adding new Subsection (e). Requires an evaluation of compliance performance information through a quality assurance and control procedure before the information may be placed on the Internet, and requires that the procedure include a 30-day period for the owner or operator of the site to review and comment on the information.

No equivalent provision.

SECTION 4.07. Same as House version.

SECTION 4.08. Amends Sections 5.758(a), (b), (d), and (h). Requires the Commission, in providing regulatory flexibility under current law, to exempt an applicant from a pollution control or abatement law or Commission rule, if

No equivalent provision.

SECTION 4.08. Same as House version.

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the applicant proposes a control or abatement by an alternative standard that is as protective of the environment, instead of more protective as currently required in law. Prohibits the Commission from exempting an applicant unless the applicant can provide evidence that the alternative is as protective of the environment and public health as the method or standard otherwise prescribed by law or rule, instead of prohibiting the exemption unless the applicant can provide documented evidence of benefits to environmental quality that will result from the applicant's proposed project as law currently requires. Provides that the Commission order related to regulatory flexibility must provide a description of the alternative method of standard, instead of a specific description as required by current law. Changes the requirement that the Commission market the regulatory flexibility program to instead require the Commission to promote the program.

SECTION 4.09. Amends Chapter 7, Subchapter A, Water Code by adding new Section 7.006. Requires the Commission to structure its general enforcement approach in rule. Requires TCEQ to assess, update, adopt, and make public its specific enforcement policies, including its policy on the calculation of penalties and *deterrence to prevent the economic benefit of noncompliance*. (House Floor Amendment 16 by Burnam)

SECTION 4.10. Amends Sections 7.052(a) and (c), Water

SECTION 4.03. Same as House version, except does not include language that TCEQ's adopted enforcement policies include *deterrence to prevent the economic benefit of noncompliance*.

SECTION 4.04. Same as House version, except has

SECTION 4.09. Same as House version.

SECTION 4.10. Same as House version.

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Code. Increases TCEQ's administrative penalty caps for categories of violations to match civil penalty maximums. Changes the cap of \$2,500 per violation per day to \$5,000 per violation per day for the following categories:

- Occupational Licenses
- On-Site Sewage Disposal
- Used Oil
- Used Oil Filter
- Water Saving Performance Standards

Changes the cap of \$10,000 per violation per day to \$25,000 per violation per day for the following categories:

- Air Quality
- Edwards Aquifer
- Industrial and Hazardous Waste
- Land over Municipal Solid Waste Landfills
- Medical Waste
- Municipal Solid Waste
- Petroleum Storage Tanks
- Radioactive Substances
- Subsurface Excavation
- Toxic Chemical Release Reporting
- Underground Injection Control
- Underground Water
- Waste Tires
- Water Quality

(House Floor Amendment 2 by Smith of Harris)

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statutory minimums for administrative penalties for both categories.

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SECTION 4.11. Amends Section 7.067, Water Code. Authorizes TCEQ to approve Supplemental Environmental Projects for local governments that would bring the respondent into compliance or remediate environmental harm caused by the alleged violation, and defines local government. Requires the Commission to develop a policy to prevent entities from avoiding compliance, including an assessment of the respondent's financial ability to pay penalties, ability to remediate harm or come into compliance, and the need for corrective action.

SECTION 4.12. Amends Section 13.4151(a), Water Code. Increases TCEQ's administrative penalty caps for public water utilities from \$500 to \$5,000 per violation per day for.

(House Floor Amendment 2 by Smith of Harris)

SECTION 4.13. Amends Section 26.028(d), Water Code. Makes a conforming change relating to the method for using, instead of evaluating, compliance history.

SECTION 4.14. Amends Section 26.0281, Water Code. Makes a conforming change relating to the method for using, instead of evaluating, compliance history.

SECTION 4.15. Amends Section 26.040(h), Water Code. Makes a conforming change consistent with the change in compliance history classification categories from lowest

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SECTION 4.05. Substantially the same as House version.

SECTION 4.06. Same as House version, except has statutory minimum for administrative penalties.

No equivalent provision.

No equivalent provision.

No equivalent provision.

CONFERENCE

SECTION 4.11. Same as House version.

SECTION 4.12. Same as House version.

SECTION 4.13. Same as House version.

SECTION 4.14. Same as House version.

SECTION 4.15. Same as House version.

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classification to classified as unsatisfactory according to Commission standards.

SECTION 4.16. Amends Section 26.3467, Water Code by adding new Subsections (d) and (e).

Subsection (d). Prohibits delivery of regulated substances to tanks unless the tank has been issued a valid and current registration and certification from TCEQ as provided for in other law. Authorizes TCEQ to assess administrative penalties for violations, and requires the Commission to adopt rules to enforce this provision.

Subsection (e). Creates an affirmative defense if the person delivering the fuel relied on a valid, paper certificate shown or displayed by the owner/operator; a temporary delivery authorization; or information obtained from TCEQ's website not more than 30-days before the delivery. *(House Floor Amendment 19 by Chisum)*

SECTION 4.17. Amends Section 26.351, Water Code, by adding Subsections (c-1) and (c-2). Authorizes TCEQ to take corrective action to remove petroleum storage tanks that are non-compliant, out of service, pose a contamination risk, and are owned or operated by a person who is financially unable to remediate the tank. Requires the Commission to adopt rules relating to this provision, including determining financial ability to pay and an

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SECTION 4.07. Amends 26.3467, Water Code, by adding new Subsection (d).

Same as House version.

No equivalent provision.

SECTION 4.08. Same as House version.

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SECTION 4.16.

Same as House version.

Same as House version.

SECTION 4.17. Same as House version.

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assessment of potential contamination risk.		
SECTION 4.18. Amends Section 26.3573(d), Water Code. Authorizes TCEQ to expend funds from the petroleum storage tank remediation account for removing petroleum storage tanks that are non-compliant in accordance with Section 26.351 (c-1).	SECTION 4.09. Same as House version.	SECTION 4.18. Same as House version.
SECTION 4.19. Amends Section 26.3574, Water Code by amending Subsection (b) and adding Subsection (b-1). Reauthorizes five petroleum storage tank remediation fees by removing language providing for their expiration on August 31, 2011, and changes the current fee levels to caps. reduces the fee cap limit for all five fees. (\$3.75 to \$3.125; \$7.50 to \$6.25; \$11.75 to \$9.37; \$15 to \$12.50; and \$7.50 to \$6.25) Requires the Commission to set fees in rule, and requires that the Commission’s rules must set the amount of the fee in an amount not to exceed the amount necessary to cover the cost of the program, as appropriated to the agency by the Legislature. <i>(House Floor Amendment 22 by Chisum)</i>	SECTION 4.10. Same as House version, except the five fee caps remain at the same levels as in current law. (\$3.75; \$7.50; \$11.75; \$15; and \$7.50)	SECTION 4.19. Same as Senate version.
SECTION 4.20. Amends Section 27.025(g), Water Code. Makes a conforming change consistent with the change in compliance history classification categories from lowest classification to classified as unsatisfactory according to Commission standards.	No equivalent provision.	SECTION 4.20. Same as House version.

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SECTION 4.21. Amends Section 27.051(d), Water Code. Makes a conforming change relating to the method for using, instead of evaluating, compliance history.	No equivalent provision.	SECTION 4.21. Same as House version.
SECTION 4.22. Amends Section 32.101(c), Water Code. Makes a conforming change relating to the method for using, instead of evaluating, compliance history.	No equivalent provision.	SECTION 4.22. Same as House version.
SECTION 4.23. Amends Section 49.198(a), Water Code. Changes from \$100,000 to \$250,000 the threshold for the amount of gross receipts collected by a water district for it to file an annual financial report with TCEQ instead of a full audit. <i>(House Floor Amendment 38 by Hughes)</i>	No equivalent provision.	SECTION 4.23. Same as House version.
SECTION 4.24. Amends Section 361.089(a), (e), and (f), Health and Safety Code. Makes conforming changes consistent with the change in compliance history classification categories from lowest classification to classified as unsatisfactory according to Commission standards.	No equivalent provision.	SECTION 4.24. Same as House version.
SECTION 4.25. Amends Section 382.0518, Health and Safety Code by amending Subsection (c) and adding Subsection (j).		SECTION 4.25.
Subsection (c). Makes a conforming change relating to the method for using, instead of evaluating, compliance history.	No equivalent provision.	Same as House version.

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Subsection (j). Prohibits TCEQ from issuing a permit for a new electric generating facility unless the applicant has submitted an assessment of best available control technology for water-cooling technology to the technology the applicant proposes. *(House Floor Amendment 25 by Burnam)*

No equivalent provision.

Same as Senate version.

SECTION 4.26. Amends Section 382.056(o), Health and Safety Code. Makes a conforming change consistent with the change in compliance history classification categories from lowest classification to classified as unsatisfactory according to Commission standards.

No equivalent provision.

SECTION 4.26. Same as House version.

SECTION 4.27. Amends Chapter 382, Subchapter C, Health and Safety Code by adding Section 382.059. 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 technology.

No equivalent provision.

SECTION 4.27. 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 solely to allow an electric generating facility to reduce emissions and comply with a requirement imposed by Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum achievable control technology. A permit amendment application shall include a condition that the applicant is required to complete the actions needed for compliance by the time allowed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(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.

(b) The commission shall provide an opportunity

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(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. (House Floor Amendment 39 by Chisum)

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for a public hearing and the submission of public comment on the application in the manner provided by Section 382.0561.

(c) Not later than the 45th day after the date the application is received, the executive director shall issue a draft permit.

(d) Not later than the 30th day after the date of issuance of the draft permit under Subsection (c), parties may submit to the commission any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the maximum achievable control technology required under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and may request a contested case hearing before the commission. If a party requests a contested case hearing under this subsection, the commission shall conduct a contested case hearing and issue a final order issuing or denying the permit amendment not later than the 120th day after the date of issuance of the draft permit under Subsection (c).

(e) 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.

(f) 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.

(g) This section expires on the sixth anniversary of the date the administrator adopts standards for existing electric generating facilities under Section 112 of the

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		<u>federal Clean Air Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.</u> <u>(h) The commission shall adopt rules to implement this section.</u>
SECTION 4.28. Amends Section 401.110(a), Health and Safety Code. Makes a conforming change relating to the method for using, instead of evaluating, compliance history.	No equivalent provision.	SECTION 4.28. Same as House version.
SECTION 4.29. Amends Section 401.112(a), Health and Safety Code. Makes a conforming change relating to the method for using, instead of evaluating, compliance history.	No equivalent provision.	SECTION 4.29. Same as House version.
No equivalent provision.	No equivalent provision.	SECTION 4.30. Instructional Provision. Requires the Commission to adopt rules not later than 180 days after the effective date of the Act, to implement new Section 382.059, Health and Safety Code, relating to permit amendment applications to use maximum achievable control technology.
SECTION 4.30. Instructional Provision.	SECTION 4.11. Instructional Provision.	SECTION 4.31.
Section (a). Requires TCEQ to adopt new compliance history rules by September 1, 2012 and provides that until the new method is adopted, the Commission will use its current standard.	Section (a). Same as House version.	Same as House version.

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Section (b). Provides that the changes in administrative penalty levels only apply to violations that occur after the effective date of the Act.	Section (b). Same as House version.	Same as House version.
Section (c). Specifies that this language only applies to a delivery to a <i>petroleum</i> storage tank made on or after the effective date of the Act.	Section (c). Same as House version, but refers to <i>underground</i> storage tanks instead of petroleum storage tanks. <i>(Senate Floor Amendment 1 by Huffman)</i>	Same as Senate version.
No equivalent provision.	Section (d). Provides that the maximum fees that are currently set out in law relating to delivery of petroleum products, will remain in effect until TCEQ adopts rules as required under the bill. <i>(Senate Floor Amendment 1 by Huffman)</i>	Same as Senate version.
SECTION 4.31. Instructional Provision. Provides instructional language that the higher gross receipts amount threshold applies to district that file annual financial reports after the effective date of the bill. <i>(House Floor Amendment 38 by Hughes)</i>	No equivalent provision.	SECTION 4.32. Same as House version.
SECTION 5.01. Amends Section 11.002(12), Water Code. For regulation of water rights, extends the definition of agriculture to include aquaculture. <i>(Third Reading House Floor Amendment 1 by Zerwas)</i>	No equivalent provision.	SECTION 5.01. Same as House version.
SECTION 5.02. Amends Section 11.031, Water Code by adding Subsections (d), (e), and (f).	SECTION 5.01. Amends Section 11.031, Water Code by adding subsections (d), (e), (f), and (g).	SECTION 5.02.

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Subsection (d). (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.

Subsection (e). (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.

No equivalent provision.

Subsection (f). Clarifies that the provisions in the bill relating to water-use reporting do not apply to the authority of watermasters, who have reporting authority elsewhere in statute.

(House Floor Amendment 29 by Ritter)

SECTION 5.03. Amends Chapter 11, Subchapter B, by adding 11.053.

Section 11.053(a). Authorizes the Executive Director,

Subsection (d). (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.

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

Subsection (f). Provides that a water rights holder is not required to submit monthly reports with the required annual report.

Subsection (g). Substantially the same as House version.

SECTION 5.02. Amends Chapter 11, Subchapter B, by adding 11.053.

No equivalent provision.

Same as House version.

Same as House version.

Same as House version.

Same as House version.

SECTION 5.03.

Same as Senate version.

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during a period of drought or other emergency shortage of water, as defined by rule, to order persons that receive or may receive water transfers to comply with drought management measures adopted by the Commission.

Section 11.053(b). Authorizes the Executive Director, during a period of drought or other emergency shortage of water, to temporarily suspend water rights in accordance with the priority of water rights contained in Section 11.027 and to adjust the diversion of water to address and imminent hazard to public health.

Section 11.053(c). Requires the Executive Director, in ordering a suspension or adjustment, to ensure that the action taken will minimize the impact on water rights holders, maximize the beneficial use of water, prevent waste, and conforms with preferences of uses of surface water in Section 11.024, Water Code.

Section 11.053(d). Requires the Commission to adopt rules, including defining a drought or other emergency shortage of water; specifying the conditions under which the Executive Director may issue an order, the terms of the order including the maximum duration, and procedures for appealing an order; and for drought management measures.

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Section 11.053(a). Authorizes the Executive Director, during a period of drought or other emergency shortage of water, in accordance with the priority of water rights contained in Section 11.027, to temporarily suspend water rights and temporarily adjust the diversion of water.

Section 11.053(b). Requires the Executive Director, in ordering a suspension or adjustment, to ensure that the action taken will minimize the impact on water rights holders; maximize the beneficial use of water; prevent waste; considering the use, by a rights holder, of water conservation and drought contingency plans required by law; conforms with preferences of uses of surface water in Section 11.024, Water Code; and not requiring the release of water that has already been diverted and stored according to a water rights permit.

Subsection 11.053(c). Substantially the same as the House version, except does not include language about adopting rules related to drought management measures.

(Senate Floor Amendment 2 by Hegar)

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Same as Senate version.

Same as Senate version.

Same as Senate version.

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SECTION 5.04. Amends Chapter 11, Subchapter D, Water Code, by adding Section 11.1273. For certain water management plans, requires the executive director to complete a technical review within one year of administrative completion; allows the applicant thirty days to provide additional information to TCEQ and provides for a tolling period; provides for public comment; and requires the Commission to act on a hearing request and act on the application within 60 days. <i>(House Floor Amendment 33 by Aycock)</i>	No equivalent provision.	SECTION 5.04. Same as House version.
SECTION 5.05. Amends Section 11.326, Water Code, by adding Subsections (g) and (h). Requires TCEQ to evaluate the need for additional watermaster programs in basins without a watermaster, at least every five years, and report findings and make recommendations to the Commission. The bill requires the Commission to determine the factors to be considered in this evaluation, and to include findings and recommendations in its biennial report to the Legislature.	SECTION 5.03. Same as House version.	SECTION 5.05. Same as House version.
SECTION 6.01. Amends Section 401.246(a), Health and Safety Code. Clarifies that the compact waste disposal fee adopted by TCEQ will include a portion that provides an amount necessary to support the Compact Commission's activities, as required by other law.	SECTION 6.01. Same as House version.	SECTION 6.01. Same as House version.
SECTION 6.02. Amends Chapter 401, Subchapter F,	SECTION 6.02. Same as House version.	SECTION 6.02. Same as House version.

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Health and Safety Code, by adding Section 401.251. Creates a new General Revenue Dedicated account and requires the Commission to deposit the portion of the compact waste disposal fee allocated to the Compact Commission into the account. Provides that money from this account may only be appropriated to support the operations of the Compact Commission.

SECTION 6.03. Amends Sections 5.701(n) and (p), Water Code.

Section 5.701(n)(1). Adjusts the Water Utility Regulatory Assessment Fee from 0.5 percent to one percent for water supply or sewer corporations. Maintains 0.5 percent fee under current law for districts. Makes conforming changes.

(House Floor Amendment 35 by Callegari)

Section 5.701(n)(3). Provides that assessments collected may be appropriated by rider to an agency with duties related to water and sewer utility regulation.

Section 5.701(p). Strikes references to Sections 13.4521 and 13.4522, repealed elsewhere in the bill. Expands the use of the Water Resource Management Account to pay for on-site sewage research grants that are being transferred to TCEQ from the On-site Wastewater Treatment Research Council elsewhere in the bill.

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SECTION 6.03. Amends Sections 5.701(n) and (p), Water Code.

Section 5.701(n)(1). Adjusts the Water Utility Regulatory Assessment Fee from 0.5 percent to one percent for water supply or sewer corporations and districts. Makes conforming changes.

Same as House version, except also allow appropriations to an agency with a duty of representation of residential and small commercial consumers. *(Senate Floor Amendment 1 by Huffman)*

Same as House version.

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SECTION 6.03.

Do not include either version, keep conforming changes. *(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*

Same as Senate version.

Same as House version.

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SECTION 6.04. Repeals Subchapter L, Chapter 13, Water Code. Eliminate three existing water and wastewater utility application fees relating to applications for rate changes; Certificates of Convenience and Necessity (CCN); and the sale, transfer, or merger of a CCN.

SECTION 6.05. Instructional Provision. Provides that the change to the water regulatory assessment fee will apply on or after January 1, 2012.

SECTION 7.01. Amends Chapter 13, Subchapter E, Water Code, by adding 13.1325. Requires the regulatory agency overseeing water and wastewater utility rates to provide, upon request, electronic copies of all water rate case information obtained from the utility at a reasonable cost, to the extent that the information is electronically available and not confidential.

SECTION 8.01. Amends the heading of Chapter 367, Health and Safety Code. Changes “ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL” to “ON-SITE WASTEWATER TREATMENT RESEARCH” to conform with abolishment of the On-site Wastewater Treatment Research Council, elsewhere in the bill.

SECTION 8.02. Amends 367.001, Health and Safety Code. Strikes the definition of On-site Wastewater

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SECTION 6.04. Same as House version.

SECTION 6.05. Same as House version.

SECTION 7.01. Same as House version, except also provides that requires copies of all information provided to the regulatory agency to be provided to the Office of Public Utility Counsel, upon request, at no cost. *(Senate Floor Amendment 1 by Huffman)*

SECTION 8.01. Same as House version.

SECTION 8.02. Same as House version.

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SECTION 6.04. Same as House version.

SECTION 6.05. Same as House version.

SECTION 7.01. Same as Senate version.

SECTION 8.01. Same as House version.

SECTION 8.02. Same as House version.

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Treatment Research Council to conform with abolishment of the On-site Wastewater Treatment Research Council.

SECTION 8.03. Amends Section 367.007, Health and Safety Code. Abolishes the On-site Wastewater Treatment Research Council and transfers authority to award grants for on-site sewage research to the Texas Commission on Environmental Quality, and makes necessary conforming changes to implement this provision. Moves the Council's fee revenue from undedicated general revenue to the Water Resource Management Account, and makes necessary conforming changes to implement this provision.

SECTION 8.04. Amends Section 367.008, Health and Safety Code. Abolishes the On-site Wastewater Treatment Research Council and transfers authority to award grants for on-site sewage research to the Texas Commission on Environmental Quality, and makes necessary conforming changes to implement this provision. Requires TCEQ to seek input from stakeholder experts when choosing research topics, awarding grants, and holding educational conferences.

SECTION 8.05. Amends Section 367.009, Health and Safety Code. Clarifies that TCEQ can only disburse money collected and appropriated relating to on-site sewage research grants.

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SECTION 8.03. Same as House version.

SECTION 8.04. Same as House version.

SECTION 8.05. Same as House version.

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SECTION 8.03. Same as House version.

SECTION 8.04. Same as House version.

SECTION 8.05. Same as House version.

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Conference Committee Report
Section-by-Section Analysis
May 26, 2011

HOUSE VERSION	SENATE VERSION	CONFERENCE
SECTION 8.06. Amends Section 367.010(d), Health and Safety Code. Moves the fee revenue dedicated to on-site sewage research grants from undedicated general revenue to the Water Resource Management Account	SECTION 8.06. Same as House version.	SECTION 8.06. Same as House version.
SECTION 8.07. Repeals Sections 367.002 - 367.006 and §367.011, Health and Safety Code. Abolishes the On-site Wastewater Treatment Research Council.	SECTION 8.07. Same as House version.	SECTION 8.07. Same as House version.
SECTION 8.08. Instructional Provision. Provides transition language for the transfer of grants and contracts to TCEQ from the On-site Wastewater Treatment Research Council.	SECTION 8.08. Same as House version.	SECTION 8.08. Same as House version.
SECTION 9.01. Amends Section 13.043(i), Water Code. Extends the time for notification of a rate change for municipally owned utility from 30 to 60 days. Allows for notice of a rate changes by a municipally owned utility by email. <i>(House Floor Amendment 7 by Menendez)</i>	No equivalent provision.	SECTION 9.01. Same as House version.
SECTION 9.02. Amends Section 13.187(b), Water Code. Allows for notice of a rate changes by a municipally owned utility by email. <i>(House Floor Amendment 7 by Menendez)</i>	No equivalent provision.	SECTION 9.02. Same as House version.
SECTION 10.01. Amends Section 382.056(n), Health and Safety Code. In contested case hearings for air permits, provides that the burden of proof is on the affected party to show that the permit should not be issued or renewed, or	No equivalent provision.	Same as Senate version.

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HOUSE VERSION	SENATE VERSION	CONFERENCE
that a related permit condition should be imposed, modified, or omitted. <i>(House Floor Amendment 40 by Chisum)</i>		
SECTION 10.02. Amends Section 5.115(b), Water Code. Prohibits a state agency from participating in a contested case, but allows submission of comments, and specifies that a river authority is not a state agency. <i>(House Floor Amendment 40 by Chisum)</i>	No equivalent provision.	SECTION 10.01. Same as House version.
SECTION 10.03. Amends Sections 5.228(c) and (d), Water Code. Requires the executive director to participate as a party in a contested case hearing and specifies the executive director's role in a contested case hearing. <i>(House Floor Amendment 40 by Chisum)</i>	No equivalent provision.	SECTION 10.02. Same as House version.
SECTION 10.04. Amends Chapter 5, Subchapter H, Water Code, by adding Sections 5.315 and 5.316.		SECTION 10.03.
Section 5.315. Requires, in a contested case hearing in front of the State Office of Administrative Hearings, discovery to be completed before the deadline for prefiled testimony, except for water and sewer rate cases.	No equivalent provision.	Same as House version.
Section 5.316. Provides that for a contested case, the rules, guidance and policies in effect at the time of the technical review remain in effect for the duration of the contested case. <i>(House Floor Amendment 40 by Chisum)</i>	No equivalent provision.	Same as Senate version.

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HOUSE VERSION

SECTION 10.05. Amends Section 5.556, Water Code, by adding (g). In contested case hearings, for water quality, underground injection control, and waste permits, provides that the burden of proof is on the affected party to show that the permit should not be issued or renewed, or that a related permit condition should be imposed, modified, or omitted. *(House Floor Amendment 40 by Chisum)*

SECTION 10.06. Repeals Section 5.228(e), Water Code. Removes language that would prohibit the Executive Director to participate as a party in a contested case hearing in some circumstances. *(House Floor Amendment 40 by Chisum)*

SECTION 10.07. Instructional provision. Provides that the new requirements apply to applications filed after the effective date of the Act. Provides that the changes apply to proceeding pending or filed at SOAH after September 1, 2011. *(House Floor Amendment 40 by Chisum)*

SECTION 11.01. Establishes the effective date of the Act as September 1, 2011.

SENATE VERSION

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 9.01. Same as House version.

CONFERENCE

Same as Senate version.

SECTION 10.04. Same as House version.

SECTION 10.05. Same as House version.

SECTION 11.01. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

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

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

Estimated Two-year Net Impact to General Revenue Related Funds for HB2694, Conference Committee Report: a positive impact of \$2,130,000 through the biennium ending August 31, 2013.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$1,087,000
2013	\$1,043,000
2014	\$1,045,000
2015	\$1,049,000
2016	\$1,051,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Water Resource Management</i> 153	Probable Savings/ (Cost) from <i>Water Resource Management</i> 153
2012	\$1,688,256	(\$601,256)	(\$631,259)	\$601,256
2013	\$1,644,256	(\$601,256)	(\$631,256)	\$601,256
2014	\$1,646,256	(\$601,256)	(\$631,256)	\$601,256
2015	\$1,650,256	(\$601,256)	(\$631,256)	\$601,256
2016	\$1,652,256	(\$601,256)	(\$631,256)	\$601,256

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

Fiscal Analysis

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

The bill would make various changes to the TCEQ's procedures for using compliance history in making decisions and levying penalties. The bill would exempt all dams on private property that impound 500 acre-feet or less and meet certain other conditions from complying with requirements relating to dam safety.

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

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

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

The bill would eliminate three existing water and wastewater utility application fees relating to applications for rate changes, Certificates of Convenience and Necessity (CCN), and the sale, transfer, or merger of a CCN. The bill also would allow appropriations to be made out of the Water Resource Management Account No. 153 to be made by rider in the General Appropriations Act to an agency with duties related to water and sewer utility regulation representing residential and small commercial consumers.

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

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

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

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

The bill would take effect on September 1, 2011.

Methodology

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

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

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

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

The bill's provisions extending the petroleum products delivery fee would have a positive fiscal impact to the General Revenue-Dedicated PST Remediation Account No. 655 of about \$28 million per fiscal year. Also included is a 2 percent service charge to the Comptroller that is estimated to generate approximately \$0.5 million in fiscal year 2012 and \$0.6 million per fiscal year in future years. This estimate assumes that the TCEQ would set the petroleum products delivery fee at maximum rate authorized by the bill. It should be noted that if the Legislature were to appropriate less than the amounts shown in the table above, plus related benefits, the revenue generated by the fee could be less. The revenue amount shown in the table above for fiscal year 2012 is only \$25,833,000 because it reflects the additional amount that would be collected above the \$2,469,000 already included in the Comptroller's Biennial Revenue Estimate for 2012-13.

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

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

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

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

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

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

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

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

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2694 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

Wayne Smith
(name)

May 26, 2011
(date)