

SUBJECT: Expanding TCEQ jurisdiction over certain nonprofit water corporations

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Puente, Callegari, Bonnen, Geren, Hope, Laney

0 nays

3 absent — Campbell, Hardcastle, Hilderbran

WITNESSES: For — Cyrus Reed, Texas Center for Policy Studies

Against — Ken Petersen, Texas Rural Water Association

On — Earl Lott, Texas Commission on Environmental Quality (TCEQ)

BACKGROUND: Water Code, ch. 13, governs water rates and services. Sec. 13.041 authorizes the Texas Commission on Environmental Quality (TCEQ) to regulate and supervise every water and sewer utility within its jurisdiction.

Sec. 13.002(11) defines a "member" of a water supply or sewer service corporation as a person holding a title to property in the service area or a person who receives or is eligible to receive service from the corporation. Each member is entitled to one vote.

Sec. 13.002(24) defines a "water supply or sewer service corporation" as a nonprofit, member-controlled corporation organized and operating under Water Code, ch. 67, that provides water or sewer service for compensation.

Water Code, ch. 67, governs nonprofit water supply or sewer service corporations. Sec. 67.007 requires the annual meeting of the members of a corporation to be held between January 1 and May 1. The corporation's board of directors must adopt written procedures for conducting an annual or special meeting that include:

- notification to members of the meeting;
- establishment of a quorum;
- nomination and election procedures;

- approval of the proxy and ballot form to be used; and
- validation of eligible voters, proxies, ballots, and results.

The corporation's board must adopt an official proxy and ballot to be used in conducting the business of the corporation.

Water Code, ch. 65, governs special utility districts. Under sec. 65.012, a special utility district can be created to operate facilities for the transportation and sale of water or for the preservation of water in the district.

DIGEST:

Under CSHB 1358, TCEQ would have the same jurisdiction over a water supply or sewer service corporation that the commission had over a water and sewer utility if TCEQ found that the water or sewer service corporation:

- failed to conduct annual or special meetings in compliance with Water Code, sec. 67.007; or
- was not operating in compliance with requirements as a nonprofit water supply or sewer service corporation under Water Code, secs. 13.002(11) and 13.002(24);

If the water supply or sewer service corporation voluntarily converted to a special utility district, TCEQ's jurisdiction as provided by the bill would end.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 1358 would ensure that a water or wastewater service supplier that was not acting in accordance with its requirements as a nonprofit corporation would come under the jurisdiction of TCEQ. To function as a nonprofit corporation, a water supplier must meet several specific standards to ensure accountability to its customers. These include standards governing the corporation's public meetings and elections. If a corporation failed to meet those standards, it would be imperative that TCEQ have some means of ensuring the quality of the water supplier's service. Otherwise a corporation could escape both regulatory and public accountability.

While TCEQ holds full jurisdiction over the service of for-profit water utilities, TCEQ has only appellate jurisdiction over the rates and cost of service of nonprofit corporations. This allows for potential abuse of customers by nonprofits. Generally, the public can hold corporations accountable at the ballot box and in public meetings. However, if these public protections were subverted, TCEQ would have virtually no ability to ensure basic service standards for a nonprofit corporation. For this reason, TCEQ needs full regulatory authority over corporations that otherwise would be unaccountable.

If a water supplier were not meeting its obligations as a nonprofit corporation, it would be inappropriate to treat that corporation as if it were a water supplier that was fully accountable to the public. TCEQ should have the ability to regulate water suppliers that are not meeting their obligations to the public they serve.

OPPONENTS
SAY:

Nonprofit water corporations are distinct from for-profit utilities, and it would be inappropriate for TCEQ to regulate nonprofits in the same manner. A nonprofit corporation is governed by a publicly elected board of directors, and the public can address any problems with the services provided by a corporation by electing a new board. Customers of nonprofit corporations still would have the right to appeal rates to TCEQ, an appropriate avenue to settle disputes.

OTHER
OPPONENTS
SAY:

While CSHB 1358 would be a step in the right direction, the bill still could allow some nonprofit corporations providing inadequate service to continue to escape meaningful oversight. TCEQ should have broader authority to bring a nonprofit corporation under regulation if it received a legitimate complaint of inadequate service from a customer.

NOTES:

As filed, HB 1358 would have given TCEQ jurisdiction over a water supply or sewer service corporation if the commission found that the corporation was not charging rates that were reasonable or providing adequate service. TCEQ could have exercised jurisdiction after receiving a complaint from a municipality, customer, or other person and conducting an investigation.