

BILL ANALYSIS

Senate Research Center

S.B. 1846
By: Hegar
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law authorizes the Texas Commission on Environmental Quality (TCEQ) to allow a respondent in an enforcement case to pay an administrative penalty in installments over a period of up to 12 months if the respondent is a qualified small business. This bill would change the 12 month limit to 36 months, giving TCEQ greater flexibility for small businesses that may not have the resources to come into compliance at the rate of larger businesses.

This bill addresses many provisions within the Water Code, including penalty payment plans, the discontinuation of the Concho River Watermaster Program, the Investor Owned Utility rate hearing provision, duties of the executive director of TCEQ, certificates of convenience and necessity, and the Clean Rivers Program.

As proposed, S.B. 1846 authorizes TCEQ or the executive commissioner of TCEQ to establish an interim rate and to enter an order to dissolve a district. S.B. 1846 prohibits the period over which the penalty may be paid from exceeding 36 months, rather than 12 months. This bill also authorizes TCEQ by rule to allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is modified in SECTION 1 (Section 5.1175, Water Code), and SECTION 4 (Section 13.242, Water Code), of this bill.

Rulemaking authority previously granted to TCEQ is modified in SECTION 6 (Section 26.0135, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.1175, Water Code, as follows:

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) Requires the Texas Commission on Environmental Quality (TCEQ) by rule to allow an entity who, rather than a small business that, owes a monetary civil or administrative penalty imposed for a violation of law within TCEQ's jurisdiction or for a violation of a license, permit, or order issued or rule adopted by TCEQ to pay the penalty in periodic installments. Requires that the rule provide a procedure for an entity to apply for permission to pay the penalty over time. Makes a conforming change.

(b) Deletes existing text of Subsection (b), relating to the required manner of classifying small businesses. Redesignates Subsection (c) as Subsection (b). Prohibits the period over which the penalty may be paid from exceeding 36 months, rather than 12 months.

SECTION 2. Amends Section 13.043(h), Water Code, to authorize TCEQ or the executive director of TCEQ (executive director) to establish interim rates to be in effect until a final decision is made in an appeal filed under Subsection (a) (relating to appealing a decision of the governing body to TCEQ), (b) (relating to ratepayers who are authorized to appeal the decision of the governing body), or (f) (relating to authorizing a certain retail public utility to appeal to TCEQ a certain decision). Deletes existing text authorizing TCEQ to establish interim rates to

be in effect until a final decision is made on a motion by the executive director or by the appellant under Subsection (a), (b), or (f) of this section.

SECTION 3. Amends Section 13.187(f), (i)-(l), (n), and (o), Water Code, as follows:

(f) Deletes existing text requiring that a hearing, if more than half of the ratepayers of the utility receive service in a county with a population of more than 2.5 million, be held at a location in that county.

(i) Authorizes the regulatory authority or, if the regulatory authority is TCEQ, the executive director, pending final action in a rate proceeding, to order the utility to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the regulatory authority.

(j) Makes a conforming change.

(k) Prohibits the proposed rate, except as provided by Subsection (d-1) (relating to authorization of a local regulatory agency to suspend the effective date of a rate change), from being suspended for longer than 250 days, rather than 150 days, by TCEQ or the executive director. Makes a conforming change.

(l) Makes a conforming change.

(n) Makes a conforming change.

(o) Makes a conforming change.

SECTION 4. Amends Section 13.242(c), Water Code, to authorize TCEQ by rule to allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 (Single Certification in Incorporated or Annexed Areas) of this code that it intends to provide retail water or sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certified area of another retail public utility.

SECTION 5. Amends Section 13.248, Water Code, to provide that contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by TCEQ or the executive director after public notice, rather than public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 6. Amends Section 26.0135(h), Water Code, as follows:

(h) Deletes existing text requiring TCEQ to apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section from users of water and wastewater permit holders in the watershed according to the records of TCEQ generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Deletes existing text requiring that the rules ensure that program funds are equitably apportioned among basins and that the rules concerning the apportionment and assessment of reasonable costs provide for a recovery of not more than \$5,000,000 annually. Deletes existing text providing that costs recovered by TCEQ are to be deposited to the credit of the water resource management account and are authorized to be used only to accomplish the purposes of this section. Deletes existing text authorizing TCEQ to apply not more than 10 percent of the costs recovered annually toward TCEQ's overhead costs for the administration of this section and the implementation of regional water quality assessments. Deletes existing text requiring TCEQ, with the assistance and input of each river authority, to file a written report accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 or each even-numbered year.

SECTION 7. Amends Section 49.321, Water Code, to authorize TCEQ or the executive director, after notice, rather than notice and hearing, to dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

SECTION 8. Amends Section 49.324, Water Code, to authorize TCEQ or the executive director to enter an order dissolving the district if TCEQ or the executive director finds that the district has performed none of the functions for which it was created for a period of five consecutive years and that the district has no outstanding bonded indebtedness. Deletes existing text authorizing TCEQ to enter an order dissolving the district at the conclusion of the hearing if it finds that the district has performed none of its functions for a period of five consecutive years before the day of the proceeding and the district has no outstanding bonding indebtedness.

SECTION 9. Amends Section 54.030(b), Water Code, to require that the resolution under this section also request that TCEQ or the executive director approve the conversion of the district. Deletes existing text requiring that the resolution also request TCEQ to hold a hearing on the question of the conversion of the district.

SECTION 10. Amends Sections 54.032 and 54.033, Water Code, as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Requires that notice of the conversion, rather than notice of the conversion hearing, be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

(b) Requires that the notice be published once a week for two consecutive weeks, rather than once a week for two consecutive weeks with the first publication to be made not less than 14 days before the time set for the hearings.

(c) Requires that the notice notify all interested persons how they may offer comments for or against the proposal contained in the resolution. Deletes existing text requiring that the notice state the time and place of the hearing and notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution. Makes nonsubstantive changes.

Sec. 54.033. CONVERSION OF DISTRICT: FINDINGS. (a) Requires the commissioner [*sic*] or executive director, if the commission or executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, to enter an order making this finding and the district is required to become a district operating under this chapter and no confirmation election is required to be required. Deletes existing text requiring that, after a hearing, if the commission finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it enter an order making this finding and the district is required to become a district operating under this chapter and no confirmation election is required to be required.

(b) Requires the commissioner [*sic*] or executive director, rather than requires it, if the commission or the executive director finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, to enter an order against conversion of the district into one operating under this chapter.

(c) Makes conforming changes.

(d) Requires that a copy of the order, rather than TCEQ order, converting a district be filed in the deed records of the county or counties in which the district is located.

SECTION 11. Makes application of Section 3 of this Act prospective.

SECTION 12. Repealers: Sections 11.559 (Referendum), 49.322 (Notice of Hearing), and 54.031 (Establishing Date for Hearing), Water Code.

SECTION 13. Effective date: September 1, 2009.