

BILL ANALYSIS

Senate Research Center

S.B. 361
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the aftermath of Hurricane Ike, the availability of drinking water and effective waste water treatment was an immediate concern that grew as power outages continued. Within 75 miles of the coast, there are 1,287 community water systems. Twenty percent of the water systems serving approximately seven million people in the affected area were out of service for varying periods of time.

Of the municipal utility districts that had generators, roughly 25 percent failed to function or ran out of fuel. Fourteen percent of the waste water lift stations in the hurricane affected area discharged into open streams. Even nine days after the storm, nearly 250,000 people lacked running water.

S.B. 361 amends current law relating to the requirement that certain water service providers ensure emergency operations during an extended power outage.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 13.1395, Water Code) of this bill.

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 13.1396, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 13, Water Code, by adding Sections 13.1395 and 13.1396, as follows:

Sec. 13.1395. STANDARDS OF EMERGENCY OPERATIONS. (a) Defines "affected utility," "emergency operations," and "extended power outage."

(b) Requires an affected utility to ensure the emergency operation of its water system during an extended power outage as soon as safe and practicable following the occurrence of a natural disaster, and adopt and submit to the Texas Commission on Environmental Quality (TCEQ) for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

(c) Requires TCEQ to review an emergency preparedness plan submitted under Subsection (b). Requires TCEQ, if TCEQ determines that the plan is not acceptable, to make its recommendations on or before the 90th day after TCEQ receives the plan. Requires an emergency preparedness plan, in accordance with TCEQ rules, to provide for one of the following:

- (1) the maintenance of automatically starting auxiliary generators;
- (2) the sharing of auxiliary generator capacity with one or more affected utilities;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the diversion of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) for existing facilities, the maintenance of direct engine or right angle drives; or

(8) any other alternative determined by TCEQ to be acceptable.

(d) Requires each affected utility that supplies, provides, or conveys surface water to include in its emergency preparedness plan under Subsection (b) provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(e) Requires TCEQ to adopt rules to implement this section as an alternative to any rule requiring elevated storage.

(f) Requires TCEQ to provide an affected utility with access to TCEQ's financial, managerial, and technical contracts to assist the utility in complying with the applicable emergency preparedness plan submission deadline.

(g) Requires TCEQ, by rule, to create an emergency preparedness plan template for use by an affected utility when submitting a plan under this section. Requires the emergency preparedness plan template to contain a list and explanation of the of the preparations an affected utility is authorized to make under Subsection (c) for TCEQ to approve the entity's emergency preparedness plan and a list of all TCEQ rules and standards pertaining to emergency preparedness plans.

(h) Requires that an emergency generator used as part of an approved emergency preparedness plan under Subsection (c) be operated and maintained according to the manufacturer's specifications.

(i) Requires TCEQ to inspect each utility to ensure that the utility complies with the approved plan.

(j) Authorizes TCEQ to grant a waiver of the requirements of this section to an affected utility if TCEQ determines that compliance with this section will cause a significant financial burden on customers of the affected utility.

(k) Authorizes an affected utility to adopt and enforce limitations on water use while the utility is providing emergency operations.

(l) Provides that except as specifically required by this section, information provided by an affected utility under this section is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

Sec. 13.1396. COORDINATION OF EMERGENCY OPERATIONS. (a) Defines "affected utility," "county judge," "electric utility," and "retail electric provider."

(b) Requires an affected utility to submit to the county judge and the office of emergency management of each county in which the utility has more than one customer, the Public Utility Commission of Texas (PUC), and the office of emergency management of the governor, a copy of the affected utility's emergency preparedness plan approved under Section 13.1395, and TCEQ's notification to the affected utility that the plan is accepted.

(c) Requires each affected utility to submit to the county judge and the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by PUC, and to PUC and the office of emergency management of the governor:

(1) information identifying the location and providing a general description of all water and wastewater facilities that qualify for critical load status; and

(2) emergency contact information for the affected utility, including the person who will serve as a point of contact and the person's telephone number, the person who will serve as an alternative point of contact and the person's telephone number, and the affected utility's mailing address.

(d) Requires an affected utility to immediately update the information provided under Subsection (c) as changes to the information occur.

(e) Requires the county judge of each county that receives the information required by Subsections (c) and (d), not later than February 1 of each year, to submit the information for each affected utility to each retail electric provider that sells electric power to an affected utility and each electric utility that provides transmission and distribution service to an affected utility; and in cooperation with the affected utility, submit for each affected utility any forms reasonably required by an electric utility or retail electric provider for determining critical load status, including a critical care eligibility determination form or similar form.

(f) Requires each electric utility and each retail electric provider, not later than May 1 of each year, to determine whether the facilities of the affected utility qualify for critical load status under rules adopted by PUC.

(g) Requires the electric utility and the retail electric provider, if an electric utility determines that an affected utility's facilities do not qualify for critical load status, not later than the 30th day after the date the electric utility or retail electric provider receives the information required by Subsections (c) and (d), to provide a detailed explanation of the electric utility's determination to each county judge that submitted the information.

SECTION 2. (a) Requires TCEQ, not later than December 1, 2009, to adopt standards as required by Section 13.1395, Water Code, as added by this Act. Requires TCEQ, as part of the rulemaking process, to conduct at least two public hearings in Harris County. Requires TCEQ to issue a report to the governor, lieutenant governor, and speaker of the house of representatives if TCEQ is unable to adopt the standards by the time provided by this subsection.

(b) Requires each affected utility, not later than November 1, 2009, to submit the information required by Section 13.1396, Water Code, as added by this Act, to each appropriate county judge and office of emergency management, PUC, and the office of emergency management of the governor.

(c) Requires each affected utility, not later than March 1, 2010, to submit TCEQ the emergency preparedness plan required by Section 13.1395, Water Code, as added by this Act.

(d) Requires each affected utility, not later than July 1, 2010, to implement the emergency preparedness plan approved by TCEQ under Section 13.1395, Water Code, as added by this Act.

(e) Authorizes an affected utility to file with TCEQ a written request for an extension, not to exceed 90 days, of the date by which the affected utility is required under Subsection (c) of this section to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under Subsection (d) of this section to implement the affected utility's emergency preparedness plan. Requires TCEQ to approve the requested extension for good cause shown.

SECTION 3. Effective date: upon passage or September 1, 2009.