SUBJECT: Allowing certain investor-owned utilities to assess an improvement charge

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Ritter, Callegari, Creighton, Frost, Laubenberg, D. Miller

0 nays

5 absent — Corte, T. King, Lucio, Martinez Fischer, Smithee

WITNESSES: For — Steve Blackhurst and Wendell Holland, Aqua Texas, Inc.

Against — Jim Boyle, Aldine Ratepayers Association

BACKGROUND: Water Code, ch. 13 governs water rates and services among public retail utilities. Subch. F, which does not apply to municipalities, counties, districts, or water supply or sewer service corporations, requires a utility making a change in its rates to deliver a statement of intent to each ratepayer and with the appropriate regulatory authority at least 60 days before the effective date of the proposed change. The new rates cannot apply to service received before the effective date of the new rates, which is the first day of a new billing period. The statement of intent has to include information required by a regulating body — either a municipality or the Texas Commission on Environmental Quality (TCEQ) — and a comparison of existing and new rates for water and sewer service.

If the regulatory authority receives a complaint from any affected municipality, or from 1,000 or 10 percent of the ratepayers of the utility, whichever is less, the regulatory authority has to set a hearing. If the regulatory authority found the rates currently being charged or those proposed are unreasonable or in violation of law, the regulatory authority would determine the rates to be charged.

A municipality and TCEQ may suspend the effective date of a rate change for up to 90 and 150 days, respectively, from the proposed effective date of the rate change, subject to extension. The approval is subject to the regulatory authority's continuation of a hearing on the proposed change in progress.

DIGEST:

CSHB 2741 would amend Water Code ch. 13, subch. F to allow a utility to assess a facilities construction and improvement charge to recover the depreciation and return on investment of a project that:

- was completed and placed into service between two consecutive statements of intent to change the utility's rates; and
- served the utility's service area, including a facility used for managing potable water or sewage.

The TCEQ would make rules to require a utility that proposed to assess a facilities construction and improvement charge to file a schedule of rates establishing a just and reasonable method for calculating the charge and to receive the approval of the executive director of the TCEQ. In adopting the rules, TCEQ would have to ensure that at least 60 days before a utility's proposed charge increased, the utility would have to submit to the executive director a notice that contained:

- the amount of the proposed charge or increase of a charge;
- the proposed implementation date for the charge or increase of a charge;
- a list of completed, eligible capital projects, and related depreciation and return on investment for which the utility sought reimbursement through the charge or increase of a charge; and
- a calculation of the projected total annual increase in revenue due to the charge or increase of a charge.

The rules would have to provide that the executive director could audit the total amount the utility would be authorized to recover and the amount the utility actually recovered through the charge annually. The requested charge would also be based on the amount necessary to ensure that the charge yielded a rate of return on invested capital equal to either the rate of return approved for the utility or the rate of return the utility proposed if the most recent change was approved by a settlement.

TCEQ also by rule would have to ensure that utility charges would be subject to additional constraints, including:

- the cumulative annual amount the utility proposed to recover would not exceed 10 percent of the utility's annual revenue;
- the utility could not implement an increase more often than twice per calendar year;

- the charge would be applied to each customer included in the schedule of rates;
- the utility would provide to each customer written notice of the charge; and
- the charge would be subject to a "true-up" at the utility's next rate case filed under existing law.

The implementation of a facilities construction and improvement charge or an increase of the charge would not be subject to a contested case hearing as provided in state law.

The bill would not apply to a utility that had in place a negotiated stay-out agreement as of September 1, 2009.

The bill would take effect September 1, 2009. TCEQ would have to adopt rules as specified in the bill by December 1, 2009. Changes in the bill would apply to a project that was completed and placed into service on or after the bill's effective date.

SUPPORTERS SAY:

CSHB 2741 would provide for the construction of necessary utility infrastructure in a more timely manner and would allow for charges for infrastructure to be assessed on a more gradual basis. Investor-owned utilities, of which there are approximately 600 in Texas, provide water and sewer services requiring massive capital expenditures to expand and update infrastructure. The current process for seeking a rate change to support an infrastructure project is unduly burdensome and time consuming for the utilities. The process can take months or years, may be costly in itself, and can discourage many utilities from pursuing necessary infrastructure improvements. The utility also may lose timely revenue through a rate suspension authorized as part of existing rate change hearing and review processes.

CSHB 2741 would allow utilities to impose a system infrastructure improvement charge between going through rate charge review processes. The improvement charge would help offset actual expenses and opportunity costs incurred through the rate charge review process and would enhance the utility's ability to provide necessary infrastructure, such as water and sewer mains, system extensions, system cleaning and repair, and facility relocations, without having to wait for conclusion of the rate review process. The charge could be adjusted biannually based on changing project needs. The gradual increases would be a beneficial

alternative to the current process that requires the utility to seek large rate charge increases infrequently.

The bill would give TCEQ rulemaking and review authority necessary to ensure that improvement charges were reasonable and that they would approximate the cost of services they were collected to provide. TCEQ would provide an annual audit of the total amount authorized and the revenue the utility received. The amount of the charge would be limited to the rate of return proposed in a rate change application or a rate approved by a settlement and would have an ultimate cap of 10 percent of the utilities annual revenue. Further, any charges imposed could be adjusted through a "true-up" provided in the bill as part of the utility's next proposed rate change.

OPPONENTS SAY:

CSHB 2741 would circumvent existing consumer protections meant to safeguard ratepayers who receive water or wastewater services from an investor-owned utility. Existing processes require such a utility to file a rate change case and potentially go through a hearing process if the change is met with complaints. As part of the hearing process, the utility has to demonstrate the need for the rate increase and justify the increase to a regulating body — a municipality, if the utility is in municipal jurisdiction, or TCEQ otherwise. The existing rate change review process was specifically established to protect against unjustified rate increases on critical public necessities — water and wastewater services.

The bill could result in major increases to utility rates for customers that have no alternative service providers. Since the bill would delete existing provisions subjecting utility rate increases to review and would not allow the charge increase to be contested through other state proceedings, the bill in effect would authorize automatic rate increases with no recourse. The fact that the increase would show up on a bill as an improvement charge as opposed to a rate increase would not make any difference to consumers.

Protections in the bill would be inadequate to protect consumers from compounding, runaway rate increases. TCEQ would be given no additional resources to perform an audit of charges, which would require considerable staff time. Further, the "true-up" provision in the bill would not be effective in protecting consumers, since there would be no requirement that this evaluation process take effect in a particular timeframe. A few years could elapse before the true-up process could

modify charges, and with an annual surcharge, there may not even be any need for a rate charge review.