

SUBJECT: Allowing TCEQ's executive director to set interim rates

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Ritter, T. King, Beck, Creighton, Hopson, Larson, Lucio, Martinez Fischer, D. Miller, Price
0 nays
1 absent — Keffer

SENATE VOTE: On final passage, April 20 — 30-1 (Estes)

WITNESSES: No public hearing

BACKGROUND: Individuals may appeal water rate decisions to the Texas Commission on Environmental Quality (TCEQ). Water Code, ch. 13.043(h) allows TCEQ, on a motion by the executive director or appellant, to establish interim rates that apply until a final decision is made.

DIGEST: CSSB 635 would allow TCEQ's executive director to establish an interim rate to be used while an appeal of a water rate change was underway. The bill also would require a utility to provide TCEQ's executive director with a copy of a statement of intent to change rates at least 60 days before a rate change. TCEQ's executive director would be able to fix interim rates to remain in effect until a final determination was made on a proposed rate.

CSSB 635 also would allow the executive director, not solely the commission, to dissolve and convert utility district. The bill would repeal sections of the Water Code regarding notice of hearing for dissolution of a district and establishing a date for hearing for converting a district.

The bill would take effect September 1, 2011.

SUPPORTERS SAY: CSSB 635 would protect consumers from having to pay extraordinarily high water rates while waiting for a decision in a TCEQ contested case hearing. TCEQ's policy is to require customers to pay the contested rate proposed by the utility until the hearing is determined. Currently, TCEQ's

executive director must go through the commission before being able to set an interim rate during a water rate appeal. Under the bill, TCEQ's executive director would be able to exercise discretion in establishing an interim rate without having first to obtain commission approval.

TCEQ contested case hearings can continue for long periods of time, resulting in consumers paying the higher rate for months or even years. This was evident in a case known as the Monarch Rate case, which began in August of 2007 and was not resolved until December 2008. The case involved 93 water systems with approximately 22,500 customers in 24 counties. The bill would allow the TCEQ executive director to establish interim rates in large and lengthy cases like the Monarch case.

**OPPONENTS
SAY:**

The bill would prevent utilities from having a voice in the decision on whether or not to implement an interim rate. Under the current system, utilities can state their case before the commission before an interim rate is imposed. If the commission decides proposed rate changes are too high, customers are refunded the difference between the proposed rate and the TCEQ-approved rate. If the commission accepts a utility's proposed rate change, customers must pay the difference between the interim rate and the proposed rate in the form of a surcharge. Increasing the instances of a TCEQ-mandated interim rate could result in consumers being forced to pay more surcharges.

NOTES:

The House committee substitute differs most significantly from the Senate-passed version of the bill by allowing the executive director, not solely the commission, to dissolve and convert utility districts and by eliminating requirements regarding notice of hearing for dissolution of a district and establishing a date for hearing for converting a district.

The provisions that would allow the executive director, not solely the commission, to dissolve and convert utility districts were also in HB 2400 by D. Miller. A point of order was sustained on HB 2400 on the House floor on May 5.