

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3550
By: King, Tracy O. (Hegar)
Natural Resources
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Committee Report (Substituted)

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.

C.S.H.B. 3550 amends current law relating to the powers and duties of TCEQ and related entities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 1 (Section 5.1175, Water Code), SECTION 4 (Section 12.052, Water Code), SECTION 7 (Section 13.242, Water Code), SECTION 9 (Section 26.0135, Water Code), and SECTION 10 (Section 37.006, 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) Authorizes, rather than requires, the Texas Commission on Environmental Quality (TCEQ) by rule to allow a person 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 a person, rather than a qualified small business, to apply for permission to pay the penalty over time.

(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 7.002, Water Code, as follows:

Sec. 7.002. ENFORCEMENT AUTHORITY. Authorizes TCEQ to initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within TCEQ's jurisdiction as provided by Section 5.013 (General Jurisdiction Of Commission) of this code and rules adopted under those provisions. Authorizes TCEQ or the executive director of TCEQ (executive director) to institute legal proceedings to compel compliance with the relevant provisions of this code and the Health and Safety Code and rules, orders, permits, or other decisions of TCEQ. Authorizes TCEQ to delegate to the executive director the authority to issue an administrative order, including an administrative order that assesses penalties or orders corrective measures, to ensure

compliance with the provisions of this code and the Health and Safety Code within TCEQ'S jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions.

SECTION 3. Amends Sections 11.0842(a) and (b), Water Code, as follows:

(a) Authorizes TCEQ, if a person violates this chapter, a rule, or order adopted under this chapter, Section 12.052, or Section 16.236 (Construction of Levee Without Approval of Plans; Levee Safety), or a permit, certified filing, or certificate of adjudication issued under this chapter, to assess an administrative penalty against that person as provided by this section. Authorizes TCEQ to assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin.

(b) Authorizes that the penalty be in an amount not to exceed \$5,000 for each day the person is in violation of this chapter, a rule, rather than the rule, or order adopted under this chapter, or a permit, rather than the permit, certified filing, or certificate of adjudication issued under this chapter. Authorizes the penalty to be in an amount not to exceed \$10,000 for each day the person is in violation of a rule or order adopted under Section 12.052. Authorizes the penalty to be in an amount not to exceed \$1,000 for each day the person is in violation of a rule or order adopted under Section 16.236, rather than the rule or order adopted by Section 16.236 of this code.

SECTION 4. Amends Section 12.052, Water Code, by amending Subsections (a), (c), and (e) and adding Subsections (g) and (h), as follows:

(a) Requires TCEQ to make and enforce rules and orders and perform all other acts necessary to provide for the safe construction, maintenance, operation, repair, and removal of dams located in this state. Requires TCEQ, in determining the frequency that dams located in this state are inspected, to give preference to inspecting dams that are classified as posing a high or significant hazard as defined by TCEQ rule.

(c) Provides that, if the owner of a dam that is required to be constructed, reconstructed, maintained, operated, repaired, or removed in order to comply with the rules and orders promulgated under this section, rather than under Subsection (a) of this section, wilfully fails or refuses to comply within the 30-day period following the date of TCEQ's final, nonappealable order to do so or if a person wilfully fails to comply with any rule or other order issued by TCEQ under this section within the 30-day period following the effective date of the order, the person is liable for a penalty, rather than he is liable to a penalty, of not more than \$10,000, rather than \$5,000, a day for each day the person, rather than he, continues to violate this section.

(e) Requires that those proceedings, if the nature of TCEQ's action requires further proceedings, to be conducted as appropriate under Chapter 2001 (Administrative Procedure), Government Code, rather than under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, V.T.C.S).

(g) Authorizes TCEQ to assess an administrative penalty as provided by Section 11.0842 against a person who violates a rule or order adopted under this section.

(h) Provides that this section does not affect the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

SECTION 5. Amends Section 13.043(h), Water Code, to authorize TCEQ or the 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 6. Amends Sections 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 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 7. 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), rather than Section 13.255 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 certificated area of another retail public utility.

SECTION 8. 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 9. 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 10. Amends Sections 37.006(f) and (g), Water Code, as follows:

(f) Authorizes a person whose license or registration has been expired for 60, rather than 30, days or less to apply for renewal of the license or registration by paying to TCEQ a renewal fee in an amount prescribed by TCEQ rule not to exceed 1-1/2 times the normally required renewal fee.

(g) Makes a conforming change.

SECTION 11. 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 12. 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 13. Amends Section 49.326(a), Water Code, to require appeals from an order, rather than a TCEQ order, dissolving a district to be filed and heard in the district court of any of the counties in which the land is located.

SECTION 14. Amends Section 54.030(b), Water Code, to require that the resolution under this section also request that TCEQ 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 15. Amends Section 54.032, 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 full days before the time set for the hearing.

(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.

SECTION 16. Amends Section 54.033, Water Code, as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) Requires TCEQ or the executive director, if TCEQ or the 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 requires the district to become a district operating under this chapter and provides that no confirmation election shall be required. Deletes existing text requiring that, after a hearing, if TCEQ 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, requiring that the district become a district operating under this chapter, and that no confirmation election is required.

(b)-(d) Makes conforming changes.

SECTION 17. Repealer: Section 49.322 (Notice of Hearing), Water Code.

Repealer: Section 54.031 (Establishing Date for Hearing), Water Code.

SECTION 18. (a) Provides that changes in law made by this Act to Sections 11.0842 and 12.052, Water Code, apply only to a violation that occurs on or after the effective date of this Act. Provides that, for purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

(b) Makes application of this Act prospective.

SECTION 19. Makes application of Section 13.187, Water Code, as amended by this Act, prospective.

SECTION 20. Makes application of Sections 37.006(f) and (g), Water Code, prospective.

SECTION 21. Effective date: September 1, 2009.