

1 AN ACT

2 relating to the continuation and functions of the Texas Commission
3 on Environmental Quality and abolishing the On-site Wastewater
4 Treatment Research Council.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. GENERAL PROVISIONS

7 SECTION 1.01. The heading to Chapter 5, Water Code, is
8 amended to read as follows:

9 CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON
10 ENVIRONMENTAL QUALITY

11 SECTION 1.02. Section 5.014, Water Code, is amended to read
12 as follows:

13 Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource~~
14 ~~Conservation~~] Commission on Environmental Quality is subject to
15 Chapter 325, Government Code (Texas Sunset Act). Unless continued
16 in existence as provided by that chapter, the commission is
17 abolished and this chapter expires September 1, 2023 [~~2011~~].

18 SECTION 1.03. Subchapter C, Chapter 5, Water Code, is
19 amended by adding Section 5.061 to read as follows:

20 Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN
21 CONTRIBUTIONS. A member of the commission may not accept a
22 contribution to a campaign for election to an elected office. If a
23 member of the commission accepts a campaign contribution, the
24 person is considered to have resigned from the office and the office

1 immediately becomes vacant. The vacancy shall be filled in the
2 manner provided by law.

3 SECTION 1.04. Subchapter D, Chapter 5, Water Code, is
4 amended by adding Section 5.1031 to read as follows:

5 Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
6 RESOLUTION. (a) The commission shall develop and implement a
7 policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter
9 2008, Government Code, for the adoption of commission rules; and

10 (2) appropriate alternative dispute resolution
11 procedures under Chapter 2009, Government Code, to assist in the
12 resolution of internal and external disputes under the commission's
13 jurisdiction.

14 (b) The commission's procedures relating to alternative
15 dispute resolution must conform, to the extent possible, to any
16 model guidelines issued by the State Office of Administrative
17 Hearings for the use of alternative dispute resolution by state
18 agencies.

19 (c) The commission shall:

20 (1) coordinate the implementation of the policy
21 adopted under Subsection (a);

22 (2) provide training as needed to implement the
23 procedures for negotiated rulemaking or alternative dispute
24 resolution; and

25 (3) collect data concerning the effectiveness of those
26 procedures.

27 SECTION 1.05. Section 5.2291(b), Water Code, is amended to

1 read as follows:

2 (b) Except as provided by Section 5.2292, the [~~The~~
3 procurement of a contract for scientific and technical
4 environmental services shall be conducted under the procedures for
5 professional services selection provided in Subchapter A, Chapter
6 2254, Government Code.

7 SECTION 1.06. Subchapter F, Chapter 5, Water Code, is
8 amended by adding Section 5.2292 to read as follows:

9 Sec. 5.2292. CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE
10 TANK STATE-LEAD PROGRAM. (a) The executive director may directly
11 award a contract for scientific and technical environmental
12 services to a person if:

13 (1) the contract is for the performance of services
14 related to the remediation of a site that has been placed in the
15 state-lead program under Section 26.3573(r-1);

16 (2) the person has registered to perform corrective
17 action under Section 26.364;

18 (3) the person is eligible to receive a contract award
19 from the state;

20 (4) the person was performing related work at the site
21 on or before July 1, 2011; and

22 (5) the contract includes all contract provisions
23 required for state contracts.

24 (b) Notwithstanding Section 2254.004, Government Code, the
25 executive director may directly award a contract for engineering
26 services to a person if:

27 (1) the contract is for the performance of services

1 related to the remediation of a site that has been placed in the
2 state-lead program under Section 26.3573(r-1);

3 (2) the person is licensed under Chapter 1001,
4 Occupations Code;

5 (3) the person has registered to perform corrective
6 action under Section 26.364;

7 (4) the person is eligible to receive a contract award
8 from the state;

9 (5) the person was performing related work at the site
10 on or before July 1, 2011; and

11 (6) the contract includes all contract provisions
12 required for state contracts.

13 (c) Nothing in Subsection (a) or (b) requires the executive
14 director to make an award at a site or prevents the executive
15 director from negotiating additional contract terms, including
16 qualifications.

17 SECTION 1.07. Section 12.052, Water Code, is amended by
18 amending Subsection (a) and adding Subsections (b-1), (e-1), (e-2),
19 and (e-3) to read as follows:

20 (a) The commission shall make and enforce rules and orders
21 and shall perform all other acts necessary to provide for the safe
22 construction, maintenance, repair, and removal of dams located in
23 this state. In performing the commission's duties under this
24 subsection, the commission shall identify and focus on the most
25 hazardous dams in the state.

26 (b-1) The commission may enter into an agreement with an
27 owner of a dam who is required to reevaluate the adequacy of an

1 existing dam or spillway. The agreement may include timelines to
2 achieve compliance with the commission's design criteria and may
3 authorize deferral of compliance with the criteria, as appropriate.

4 (e-1) The commission shall exempt an owner of a dam located
5 on private property from meeting requirements related to dam safety
6 if the dam:

7 (1) at maximum capacity impounds less than 500
8 acre-feet;

9 (2) has a hazard classification of low or significant;

10 (3) is located in a county with a population of less
11 than 215,000; and

12 (4) is not located inside the corporate limits of a
13 municipality.

14 (e-2) Notwithstanding Subsection (e-1), an owner of a dam
15 shall comply with operation and maintenance requirements
16 established by commission rule.

17 (e-3) This subsection and Subsections (e-1) and (e-2)
18 expire August 31, 2015.

19 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

20 SECTION 2.01. Section 91.011, Natural Resources Code, is
21 amended to read as follows:

22 Sec. 91.011. CASING. (a) Before drilling into the oil or
23 gas bearing rock, the owner or operator of a well being drilled for
24 oil or gas shall encase the well with good and sufficient wrought
25 iron or steel casing or with any other material that meets standards
26 adopted by the commission, particularly where wells could be
27 subjected to corrosive elements or high pressures and temperatures,

1 in a manner and to a depth that will exclude surface or fresh water
2 from the lower part of the well from penetrating the oil or gas
3 bearing rock, and if the well is drilled through the first into the
4 lower oil or gas bearing rock, the well shall be cased in a manner
5 and to a depth that will exclude fresh water above the last oil or
6 gas bearing rock penetrated.

7 (b) The commission shall adopt rules regarding the depth of
8 well casings necessary to meet the requirements of this section.

9 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources
10 Code, is amended by adding Section 91.0115 to read as follows:

11 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The
12 commission shall issue, on request from an applicant for a permit
13 for a well to be drilled into oil or gas bearing rock, a letter of
14 determination stating the total depth of surface casing required
15 for the well by Section 91.011.

16 (b) The commission may charge a fee in an amount to be
17 determined by the commission for a letter of determination.

18 (c) The commission shall charge a fee not to exceed \$75, in
19 addition to the fee required by Subsection (b), for processing a
20 request to expedite a letter of determination. Money collected
21 under this subsection may be used to study and evaluate electronic
22 access to geologic data and surface casing depths under Section
23 91.020.

24 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources
25 Code, is amended by adding Section 91.020 to read as follows:

26 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission
27 shall work cooperatively with other appropriate state agencies to

1 study and evaluate electronic access to geologic data and surface
2 casing depths necessary to protect usable groundwater in this
3 state.

4 SECTION 2.04. Subchapter D, Chapter 91, Natural Resources
5 Code, is amended by adding Section 91.1015 to read as follows:

6 Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The
7 commission shall adopt rules to establish groundwater protection
8 requirements for operations that are within the jurisdiction of the
9 commission, including requirements relating to the depth of surface
10 casing for wells.

11 SECTION 2.05. Section 27.033, Water Code, is amended to
12 read as follows:

13 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
14 ~~DIRECTOR~~]. A person making application to the railroad commission
15 for a permit under this chapter shall submit with the application a
16 letter of determination from the railroad commission [~~from the~~
17 ~~executive director~~] stating that drilling and using the disposal
18 well and injecting oil and gas waste into the subsurface stratum
19 will not endanger the freshwater strata in that area and that the
20 formation or stratum to be used for the disposal is not freshwater
21 sand.

22 SECTION 2.06. Section 27.046, Water Code, is amended to
23 read as follows:

24 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
25 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit
26 under rules adopted under this subchapter until the railroad
27 commission issues to the applicant for the permit [~~provides to the~~

1 ~~railroad commission~~] a letter of determination [~~from the executive~~
2 ~~director~~] stating that drilling and operating the anthropogenic
3 carbon dioxide injection well for geologic storage or operating the
4 geologic storage facility will not injure any freshwater strata in
5 that area and that the formation or stratum to be used for the
6 geologic storage facility is not freshwater sand.

7 (b) To make the determination required by Subsection (a),
8 the railroad commission [~~executive director~~] shall review:

9 (1) the area of review and corrective action plans;

10 (2) any subsurface monitoring plans required during
11 injection or post injection;

12 (3) any postinjection site care plans; and

13 (4) any other elements of the application reasonably
14 required in order for the railroad commission [~~executive director~~]
15 to make the determination required by Subsection (a).

16 (c) The railroad commission shall adopt rules to implement
17 and administer this section.

18 SECTION 2.07. Section 5.701(r), Water Code, is repealed.

19 SECTION 2.08. (a) The Railroad Commission of Texas shall
20 adopt rules to implement the changes in law made by this article not
21 later than March 1, 2012.

22 (b) A rule, form, policy, or procedure of the Texas
23 Commission on Environmental Quality related to the changes in law
24 made by this article continues in effect as a rule, form, policy, or
25 procedure of the Railroad Commission of Texas and remains in effect
26 until amended or replaced by that agency.

27 ARTICLE 3. PUBLIC INTEREST

1 SECTION 3.01. Subchapter F, Chapter 5, Water Code, is
2 amended by adding Section 5.239 to read as follows:

3 Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The
4 executive director shall ensure that the agency is responsive to
5 environmental and citizens' concerns, including environmental
6 quality and consumer protection.

7 (b) The executive director shall develop and implement a
8 program to:

9 (1) provide a centralized point for the public to
10 access information about the commission and to learn about matters
11 regulated by the commission;

12 (2) identify and assess the concerns of the public in
13 regard to matters regulated by the commission; and

14 (3) respond to the concerns identified by the program.

15 SECTION 3.02. Section 5.271, Water Code, is amended to read
16 as follows:

17 Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE
18 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest
19 counsel is created to ensure that the commission promotes the
20 public's interest [~~and is responsive to environmental and citizens'~~
21 ~~concerns including environmental quality and consumer protection~~].
22 The primary duty of the office is to represent the public interest
23 as a party to matters before the commission.

24 SECTION 3.03. Subchapter G, Chapter 5, Water Code, is
25 amended by adding Section 5.2725 to read as follows:

26 Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The
27 office of public interest counsel shall report to the commission

1 each year in a public meeting held on a date determined by the
2 commission to be timely for the commission to include the reported
3 information in the commission's reports under Sections 5.178(a) and
4 (b) and in the commission's biennial legislative appropriations
5 requests as appropriate:

6 (1) an evaluation of the office's performance in
7 representing the public interest in the preceding year;

8 (2) an assessment of the budget needs of the office,
9 including the need to contract for outside expertise; and

10 (3) any legislative or regulatory changes recommended
11 under Section 5.273.

12 (b) The commission and the office of public interest counsel
13 shall work cooperatively to identify performance measures for the
14 office.

15 SECTION 3.04. Subchapter G, Chapter 5, Water Code, is
16 amended by adding Section 5.276 to read as follows:

17 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

18 (a) The commission by rule, after consideration of recommendations
19 from the office of public interest counsel, shall establish factors
20 the public interest counsel must consider before the public
21 interest counsel decides to represent the public interest as a
22 party to a commission proceeding.

23 (b) Rules adopted under this section must include:

24 (1) factors to determine the nature and extent of the
25 public interest; and

26 (2) factors to consider in prioritizing the workload
27 of the office of public interest counsel.

ARTICLE 4. COMPLIANCE AND ENFORCEMENT

SECTION 4.01. Section 5.751, Water Code, is amended to read as follows:

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters 26, ~~and~~ 27, and 32 of this code and Chapters 361, 375, 382, and 401, Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

SECTION 4.02. Section 5.752(1), Water Code, is amended to read as follows:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent~~[-]~~ decree, or other requirement.

SECTION 4.03. The heading to Section 5.753, Water Code, is amended to read as follows:

Sec. 5.753. STANDARDS ~~[STANDARD]~~ FOR EVALUATING AND USING COMPLIANCE HISTORY.

SECTION 4.04. Section 5.753, Water Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (d-1) to read as follows:

(a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop standards ~~[a uniform standard]~~ for evaluating and using compliance history that ensure consistency. In developing the standards, the commission may account for differences among regulated entities.

(b) The components of compliance history must include:

1 (1) enforcement orders, court judgments, [~~consent~~
2 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~
3 ~~government~~] relating to compliance with applicable legal
4 requirements under the jurisdiction of the commission [~~or the~~
5 ~~United States Environmental Protection Agency~~];

6 (2) notwithstanding any other provision of this code,
7 orders issued under Section 7.070;

8 (3) to the extent readily available to the commission,
9 enforcement orders, court judgments, consent decrees, and criminal
10 convictions relating to violations of environmental rules [~~laws~~] of
11 the United States Environmental Protection Agency [~~other states~~];
12 and

13 (4) changes in ownership.

14 (d) Except as provided by this subsection, notices of
15 violation must be included as a component of compliance history for
16 a period not to exceed one year from the date of issuance of each
17 notice of violation. The listing of a notice of violation must be
18 preceded by the following statement prominently displayed: "A
19 notice of violation represents a written allegation of a violation
20 of a specific regulatory requirement from the commission to a
21 regulated entity. A notice of violation is not a final enforcement
22 action nor proof that a violation has actually occurred." [~~The set~~
23 ~~of components shall include notices of violations.~~] A notice of
24 violation administratively determined to be without merit may
25 [~~shall~~] not be included in a compliance history. A notice of
26 violation that is included in a compliance history shall be removed
27 from the compliance history if the commission subsequently

1 determines the notice of violation to be without merit.

2 (d-1) For purposes of listing compliance history, the
3 commission may not include as a notice of violation information
4 received by the commission as required by Title V of the federal
5 Clean Air Act (42 U.S.C. Section 7661 et seq.) unless the commission
6 issues a written notice of violation. Final enforcement orders or
7 judgments resulting from self-reported Title V deviations or
8 violations may be considered as compliance history components for
9 purposes of determining compliance history.

10 SECTION 4.05. Section 5.754, Water Code, is amended by
11 amending Subsections (a), (b), (c), (d), (e), (g), and (h) and
12 adding Subsection (e-1) to read as follows:

13 (a) The commission by rule shall establish a set of
14 standards for the classification of a person's compliance history
15 as a means of evaluating compliance history. The commission may
16 consider the person's classification when using compliance history
17 under Subsection (e).

18 (b) Rules adopted under Subsection (a):

19 (1) [this section] must, at a minimum, provide for
20 three classifications of compliance history in a manner adequate to
21 distinguish among:

22 (A) unsatisfactory [~~(1) poor~~] performers, or
23 regulated entities that in the commission's judgment perform below
24 minimal acceptable performance standards established by the
25 commission [average];

26 (B) satisfactory [~~(2) average~~] performers, or
27 regulated entities that generally comply with environmental

1 regulations; and

2 (C) [~~(3)~~] high performers, or regulated entities
3 that have an above-satisfactory [~~above-average~~] compliance record;

4 (2) may establish a category of unclassified
5 performers, or regulated entities for which the commission does not
6 have adequate compliance information about the site; and

7 (3) must take into account both positive and negative
8 factors related to the operation, size, and complexity of the site,
9 including whether the site is subject to Title V of the federal
10 Clean Air Act (42 U.S.C. Section 7661 et seq.).

11 (c) In classifying a person's compliance history, the
12 commission shall:

13 (1) determine whether a violation of an applicable
14 legal requirement is of major, moderate, or minor significance;

15 (2) establish criteria for classifying a repeat
16 violator, giving consideration to the size [~~number~~] and complexity
17 of the site at which the violations occurred, and limiting
18 consideration to violations of the same nature and the same
19 environmental media that occurred in the preceding five years
20 [~~facilities owned or operated by the person~~]; and

21 (3) consider:

22 (A) the significance of the violation and whether
23 the person is a repeat violator;

24 (B) the size and complexity of the site,
25 including whether the site is subject to Title V of the federal
26 Clean Air Act (42 U.S.C. Section 7661 et seq.); and

27 (C) the potential for a violation at the site

1 that is attributable to the nature and complexity of the site.

2 (d) The commission by rule may require [~~shall establish~~
3 ~~methods of assessing the compliance history of regulated entities~~
4 ~~for which it does not have adequate compliance information. The~~
5 ~~methods may include requiring~~] a compliance inspection to determine
6 an entity's eligibility for participation in a program that
7 requires a high level of compliance.

8 (e) The commission by rule shall provide for the use of
9 compliance history [~~classifications~~] in commission decisions
10 regarding:

11 (1) the issuance, renewal, amendment, modification,
12 denial, suspension, or revocation of a permit;

13 (2) enforcement;

14 (3) the use of announced inspections; and

15 (4) participation in innovative programs.

16 (e-1) The amount of the penalty enhancement or escalation
17 attributed to compliance history may not exceed 100 percent of the
18 base penalty for an individual violation as determined by the
19 commission's penalty policy.

20 (g) Rules adopted under Subsection (e) for the use of
21 compliance history shall provide for additional oversight of, and
22 review of applications regarding, facilities owned or operated by a
23 person whose compliance performance is classified as
24 unsatisfactory according to commission standards [~~in the lowest~~
25 ~~classification developed under this section~~].

26 (h) The commission by rule shall, at a minimum, prohibit a
27 person whose compliance history is classified as unsatisfactory

1 according to commission standards [~~in the lowest classification~~
2 ~~developed under this section~~] from[~~+~~

3 [~~(1) receiving an announced inspection; and~~
4 [~~(2)~~] obtaining or renewing a flexible permit under
5 the program administered by the commission under Chapter 382,
6 Health and Safety Code, or participating in the regulatory
7 flexibility program administered by the commission under Section
8 5.758.

9 SECTION 4.06. Section 5.755(b), Water Code, is amended to
10 read as follows:

11 (b) The strategically directed regulatory structure shall
12 offer incentives based on:

13 (1) a person's compliance history [~~classification~~];
14 and

15 (2) any voluntary measures undertaken by the person to
16 improve environmental quality.

17 SECTION 4.07. Section 5.756, Water Code, is amended by
18 adding Subsection (e) to read as follows:

19 (e) Before compliance performance information about a site
20 may be placed on the Internet under this subchapter, the
21 information must be evaluated through a quality assurance and
22 control procedure, including a 30-day period for the owner or
23 operator of the site to review and comment on the information.

24 SECTION 4.08. Sections 5.758(a), (b), (d), and (h), Water
25 Code, are amended to read as follows:

26 (a) The commission by order may exempt an applicant from a
27 requirement of a statute or commission rule regarding the control

1 or abatement of pollution if the applicant proposes to control or
2 abate pollution by an alternative method or by applying an
3 alternative standard that is:

4 (1) as [~~more~~] protective of the environment and the
5 public health as [~~than~~] the method or standard prescribed by the
6 statute or commission rule that would otherwise apply; and

7 (2) not inconsistent with federal law.

8 (b) The commission may not exempt an applicant under this
9 section unless the applicant can present to the commission
10 [~~documented~~] evidence that the alternative the applicant proposes
11 is as protective of the environment and the public health as the
12 method or standard prescribed by the statute or commission rule
13 that would otherwise apply [~~of benefits to environmental quality~~
14 ~~that will result from the project the applicant proposes~~].

15 (d) The commission's order must provide a [~~specific~~]
16 description of the alternative method or standard and condition the
17 exemption on compliance with the method or standard as the order
18 prescribes.

19 (h) In implementing the program of regulatory flexibility
20 authorized by this section, the commission shall:

21 (1) promote [~~market~~] the program to businesses in the
22 state through all available appropriate media;

23 (2) endorse alternative methods that will clearly
24 benefit the environment and impose the least onerous restrictions
25 on business;

26 (3) fix and enforce environmental standards, allowing
27 businesses flexibility in meeting the standards in a manner that

1 clearly enhances environmental outcomes; and

2 (4) work to achieve consistent and predictable results
3 for the regulated community and shorter waits for permit issuance.

4 SECTION 4.09. Subchapter A, Chapter 7, Water Code, is
5 amended by adding Section 7.006 to read as follows:

6 Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by
7 rule shall adopt a general enforcement policy that describes the
8 commission's approach to enforcement.

9 (b) The commission shall assess, update, and publicly adopt
10 specific enforcement policies regularly, including policies
11 regarding the calculation of penalties and deterrence to prevent
12 the economic benefit of noncompliance.

13 (c) The commission shall make the policies available to the
14 public, including by posting the policies on the commission's
15 Internet website.

16 SECTION 4.10. Sections 7.052(a) and (c), Water Code, are
17 amended to read as follows:

18 (a) The amount of the penalty for a violation of Chapter 37
19 of this code, Chapter 366, 371, or 372, Health and Safety Code, or
20 Chapter 1903, Occupations Code, may not exceed \$5,000 [~~\$2,500~~] a
21 day for each violation.

22 (c) The amount of the penalty for all other violations
23 within the jurisdiction of the commission to enforce may not exceed
24 \$25,000 [~~\$10,000~~] a day for each violation.

25 SECTION 4.11. Section 7.067, Water Code, is amended to read
26 as follows:

27 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The

1 commission may compromise, modify, or remit, with or without
2 conditions, an administrative penalty imposed under this
3 subchapter. In determining the appropriate amount of a penalty for
4 settlement of an administrative enforcement matter, the commission
5 may consider a respondent's willingness to contribute to
6 supplemental environmental projects that are approved by the
7 commission, giving preference to projects that benefit the
8 community in which the alleged violation occurred. The commission
9 may encourage the cleanup of contaminated property through the use
10 of supplemental environmental projects. The commission may approve
11 a supplemental environmental project with activities in territory
12 of the United Mexican States if the project substantially benefits
13 territory in this state in a manner described by Subsection (b).
14 Except as provided by Subsection (a-1), the [The] commission may
15 not approve a project that is necessary to bring a respondent into
16 compliance with environmental laws, that is necessary to remediate
17 environmental harm caused by the respondent's alleged violation, or
18 that the respondent has already agreed to perform under a
19 preexisting agreement with a governmental agency.

20 (a-1) The commission may approve a supplemental
21 environmental project that is necessary to bring a respondent into
22 compliance with environmental laws or that is necessary to
23 remediate environmental harm caused by the respondent's alleged
24 violation if the respondent is a local government.

25 (a-2) The commission shall develop a policy to prevent
26 regulated entities from systematically avoiding compliance through
27 the use of supplemental environmental projects under Subsection

1 (a-1), including a requirement for an assessment of:

2 (1) the respondent's financial ability to pay
3 administrative penalties;

4 (2) the ability of the respondent to remediate the
5 harm or come into compliance; and

6 (3) the need for corrective action.

7 (b) In this section:

8 (1) "Local government" means a school district,
9 county, municipality, junior college district, river authority,
10 water district or other special district, or other political
11 subdivision created under the constitution or a statute of this
12 state.

13 (2) "Supplemental [~~,"supplemental]~~ environmental
14 project" means a project that prevents pollution, reduces the
15 amount of pollutants reaching the environment, enhances the quality
16 of the environment, or contributes to public awareness of
17 environmental matters.

18 SECTION 4.12. Section 13.4151(a), Water Code, is amended to
19 read as follows:

20 (a) If a person, affiliated interest, or entity subject to
21 the jurisdiction of the commission violates this chapter or a rule
22 or order adopted under this chapter, the commission may assess a
23 penalty against that person, affiliated interest, or entity as
24 provided by this section. The penalty may be in an amount not to
25 exceed \$5,000 [~~\$500~~] a day. Each day a violation continues may be
26 considered a separate violation.

27 SECTION 4.13. Section 26.028(d), Water Code, is amended to

1 read as follows:

2 (d) Notwithstanding any other provision of this chapter,
3 the commission, at a regular meeting without the necessity of
4 holding a public hearing, may approve an application to renew or
5 amend a permit if:

6 (1) the applicant is not applying to:

7 (A) increase significantly the quantity of waste
8 authorized to be discharged; or

9 (B) change materially the pattern or place of
10 discharge;

11 (2) the activities to be authorized by the renewed or
12 amended permit will maintain or improve the quality of waste
13 authorized to be discharged;

14 (3) for NPDES permits, notice and the opportunity to
15 request a public meeting shall be given in compliance with NPDES
16 program requirements, and the commission shall consider and respond
17 to all timely received and significant public comment; and

18 (4) the commission determines that an applicant's
19 compliance history under the method for using ~~[evaluating]~~
20 compliance history developed by the commission under Section 5.754
21 raises no issues regarding the applicant's ability to comply with a
22 material term of its permit.

23 SECTION 4.14. Section 26.0281, Water Code, is amended to
24 read as follows:

25 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In
26 considering the issuance, amendment, or renewal of a permit to
27 discharge effluent comprised primarily of sewage or municipal

1 waste, the commission shall consider the compliance history of the
2 applicant and its operator under the method for using [~~evaluating~~]
3 compliance history developed by the commission under Section 5.754.
4 In considering an applicant's compliance history under this
5 subsection, the commission shall consider as evidence of compliance
6 information regarding the applicant's implementation of an
7 environmental management system at the facility for which the
8 permit, permit amendment, or permit renewal is sought. In this
9 section, "environmental management system" has the meaning
10 assigned by Section 5.127.

11 SECTION 4.15. Section 26.040(h), Water Code, is amended to
12 read as follows:

13 (h) Notwithstanding other provisions of this chapter, the
14 commission, after hearing, shall deny or suspend a discharger's
15 authority to discharge under a general permit if the commission
16 determines that the discharger's compliance history is classified
17 as unsatisfactory according to commission standards [~~in the lowest~~
18 ~~classification~~] under Sections 5.753 and 5.754 and rules adopted
19 and procedures developed under those sections. A hearing under this
20 subsection is not subject to Chapter 2001, Government Code.

21 SECTION 4.16. Section 26.3467, Water Code, is amended by
22 adding Subsections (d) and (e) to read as follows:

23 (d) A person may not deliver any regulated substance into an
24 underground storage tank regulated under this chapter unless the
25 underground storage tank has been issued a valid, current
26 underground storage tank registration and certificate of
27 compliance under Section 26.346. The commission may impose an

1 administrative penalty against a person who violates this
2 subsection. The commission shall adopt rules as necessary to
3 enforce this subsection.

4 (e) It is an affirmative defense to the imposition of an
5 administrative penalty for a violation of Subsection (d) that the
6 person delivering a regulated substance into an underground storage
7 tank relied on:

8 (1) a valid paper delivery certificate presented by
9 the owner or operator of the underground storage tank or displayed
10 at the facility associated with the underground storage tank;

11 (2) a temporary delivery authorization presented by
12 the owner or operator of the underground storage tank or displayed
13 at the facility associated with the underground storage tank; or

14 (3) registration and self-certification information
15 for the underground storage tank obtained from the commission's
16 Internet website not more than 30 days before the date of delivery.

17 SECTION 4.17. Section 26.351, Water Code, is amended by
18 adding Subsections (c-1) and (c-2) to read as follows:

19 (c-1) The commission may undertake corrective action to
20 remove an underground or aboveground storage tank that:

21 (1) is not in compliance with the requirements of this
22 chapter;

23 (2) is out of service;

24 (3) presents a contamination risk; and

25 (4) is owned or operated by a person who is financially
26 unable to remove the tank.

27 (c-2) The commission shall adopt rules to implement

1 Subsection (c-1), including rules regarding:

2 (1) the determination of the financial ability of the
3 tank owner or operator to remove the tank; and

4 (2) the assessment of the potential risk of
5 contamination from the site.

6 SECTION 4.18. Section 26.3573(d), Water Code, is amended to
7 read as follows:

8 (d) The commission may use the money in the petroleum
9 storage tank remediation account to pay:

10 (1) necessary expenses associated with the
11 administration of the petroleum storage tank remediation account
12 and the groundwater protection cleanup program;

13 (2) expenses associated with investigation, cleanup,
14 or corrective action measures performed in response to a release or
15 threatened release from a petroleum storage tank, whether those
16 expenses are incurred by the commission or pursuant to a contract
17 between a contractor and an eligible owner or operator as
18 authorized by this subchapter;

19 (3) subject to the conditions of Subsection (f),
20 expenses associated with investigation, cleanup, or corrective
21 action measures performed in response to a release or threatened
22 release of hydraulic fluid or spent oil from hydraulic lift systems
23 or tanks located at a vehicle service and fueling facility and used
24 as part of the operations of that facility; ~~and~~

25 (4) expenses associated with assuring compliance with
26 the commission's applicable underground or aboveground storage
27 tank administrative and technical requirements, including

1 technical assistance and support, inspections, enforcement, and
2 the provision of matching funds for grants; and

3 (5) expenses associated with investigation, cleanup,
4 or corrective action measures performed under Section 26.351(c-1).

5 SECTION 4.19. Section 26.3574, Water Code, is amended by
6 amending Subsection (b) and adding Subsection (b-1) to read as
7 follows:

8 (b) A fee is imposed on the delivery of a petroleum product
9 on withdrawal from bulk of that product as provided by this
10 subsection. Each operator of a bulk facility on withdrawal from
11 bulk of a petroleum product shall collect from the person who orders
12 the withdrawal a fee in an amount determined as follows:

13 (1) not more than \$3.75 for each delivery into a cargo
14 tank having a capacity of less than 2,500 gallons [~~for the state~~
15 ~~fiscal year beginning September 1, 2007, through the state fiscal~~
16 ~~year ending August 31, 2011]~~;

17 (2) not more than \$7.50 for each delivery into a cargo
18 tank having a capacity of 2,500 gallons or more but less than 5,000
19 gallons [~~for the state fiscal year beginning September 1, 2007,~~
20 ~~through the state fiscal year ending August 31, 2011]~~;

21 (3) not more than \$11.75 for each delivery into a cargo
22 tank having a capacity of 5,000 gallons or more but less than 8,000
23 gallons [~~for the state fiscal year beginning September 1, 2007,~~
24 ~~through the state fiscal year ending August 31, 2011]~~;

25 (4) not more than \$15.00 for each delivery into a cargo
26 tank having a capacity of 8,000 gallons or more but less than 10,000
27 gallons [~~for the state fiscal year beginning September 1, 2007,~~

1 ~~through the state fiscal year ending August 31, 2011]; and~~

2 (5) not more than \$7.50 for each increment of 5,000
3 gallons or any part thereof delivered into a cargo tank having a
4 capacity of 10,000 gallons or more [~~for the state fiscal year~~
5 ~~beginning September 1, 2007, through the state fiscal year ending~~
6 ~~August 31, 2011]~~.

7 (b-1) The commission by rule shall set the amount of the fee
8 in Subsection (b) in an amount not to exceed the amount necessary to
9 cover the agency's costs of administering this subchapter, as
10 indicated by the amount appropriated by the legislature from the
11 petroleum storage tank remediation account for that purpose.

12 SECTION 4.20. Section 27.025(g), Water Code, is amended to
13 read as follows:

14 (g) Notwithstanding the other provisions of this chapter,
15 the commission, after hearing, shall deny or suspend authorization
16 for the use of an injection well under a general permit if the
17 commission determines that the owner's compliance history is
18 classified as unsatisfactory according to commission standards [~~in~~
19 ~~the lowest classification]~~ under Sections 5.753 and 5.754 and rules
20 adopted and procedures developed under those sections. A hearing
21 under this subsection is not subject to the requirements relating
22 to a contested case hearing under Chapter 2001, Government Code.

23 SECTION 4.21. Section 27.051(d), Water Code, is amended to
24 read as follows:

25 (d) The commission, in determining if the use or
26 installation of an injection well is in the public interest under
27 Subsection (a)(1), shall consider, but shall not be limited to the

1 consideration of:

2 (1) compliance history of the applicant and related
3 entities under the method for using ~~[evaluating]~~ compliance history
4 developed by the commission under Section 5.754 and in accordance
5 with the provisions of Subsection (e);

6 (2) whether there is a practical, economic, and
7 feasible alternative to an injection well reasonably available; and

8 (3) if the injection well will be used for the disposal
9 of hazardous waste, whether the applicant will maintain sufficient
10 public liability insurance for bodily injury and property damage to
11 third parties that is caused by sudden and non-sudden accidents or
12 will otherwise demonstrate financial responsibility in a manner
13 adopted by the commission in lieu of public liability insurance. A
14 liability insurance policy which satisfies the policy limits
15 required by the hazardous waste management regulations of the
16 commission for the applicant's proposed pre-injection facilities
17 shall be deemed "sufficient" under this subdivision if the policy:

18 (A) covers the injection well; and

19 (B) is issued by a company that is authorized to
20 do business and to write that kind of insurance in this state and is
21 solvent and not currently under supervision or in conservatorship
22 or receivership in this state or any other state.

23 SECTION 4.22. Section 32.101(c), Water Code, is amended to
24 read as follows:

25 (c) The commission, in determining if the use or
26 installation of a subsurface area drip dispersal system is in the
27 public interest under Subsection (a)(1), shall consider:

1 (1) compliance history of the applicant and related
2 entities under the method for using [~~evaluating~~] compliance history
3 developed by the commission under Section 5.754 and in accordance
4 with the provisions of Subsection (d) of this section;

5 (2) whether there is a practical, economic, and
6 feasible alternative to a subsurface area drip dispersal system
7 reasonably available; and

8 (3) any other factor the commission considers
9 relevant.

10 SECTION 4.23. Section 49.198(a), Water Code, is amended to
11 read as follows:

12 (a) A district may elect to file annual financial reports
13 with the executive director in lieu of the district's compliance
14 with Section 49.191 provided:

15 (1) the district had no bonds or other long-term (more
16 than one year) liabilities outstanding during the fiscal period;

17 (2) the district did not have gross receipts from
18 operations, loans, taxes, or contributions in excess of \$250,000
19 [~~\$100,000~~] during the fiscal period; and

20 (3) the district's cash and temporary investments were
21 not in excess of \$100,000 at any time during the fiscal period.

22 SECTION 4.24. Sections 361.089(a), (e), and (f), Health and
23 Safety Code, are amended to read as follows:

24 (a) The commission may, for good cause, deny or amend a
25 permit it issues or has authority to issue for reasons pertaining to
26 public health, air or water pollution, or land use, or for having a
27 compliance history that is classified as unsatisfactory according

1 to commission standards [~~in the lowest classification~~] under
2 Sections 5.753 and 5.754, Water Code, and rules adopted and
3 procedures developed under those sections.

4 (e) The commission may deny an original or renewal permit if
5 it is found, after notice and hearing, that:

6 (1) the applicant or permit holder has a compliance
7 history that is classified as unsatisfactory according to
8 commission standards [~~in the lowest classification~~] under Sections
9 5.753 and 5.754, Water Code, and rules adopted and procedures
10 developed under those sections;

11 (2) the permit holder or applicant made a false or
12 misleading statement in connection with an original or renewal
13 application, either in the formal application or in any other
14 written instrument relating to the application submitted to the
15 commission, its officers, or its employees;

16 (3) the permit holder or applicant is indebted to the
17 state for fees, payment of penalties, or taxes imposed by this title
18 or by a rule of the commission; or

19 (4) the permit holder or applicant is unable to ensure
20 that the management of the hazardous waste management facility
21 conforms or will conform to this title and the rules of the
22 commission.

23 (f) Before denying a permit under this section, the
24 commission must find:

25 (1) that the applicant or permit holder has a
26 compliance history that is classified as unsatisfactory according
27 to commission standards [~~in the lowest classification~~] under

1 Sections 5.753 and 5.754, Water Code, and rules adopted and
2 procedures developed under those sections; or

3 (2) that the permit holder or applicant is indebted to
4 the state for fees, payment of penalties, or taxes imposed by this
5 title or by a rule of the commission.

6 SECTION 4.25. Section 382.0518(c), Health and Safety Code,
7 is amended to read as follows:

8 (c) In considering the issuance, amendment, or renewal of a
9 permit, the commission may consider the applicant's compliance
10 history in accordance with the method for using [~~evaluating~~]
11 compliance history developed by the commission under Section 5.754,
12 Water Code. In considering an applicant's compliance history under
13 this subsection, the commission shall consider as evidence of
14 compliance information regarding the applicant's implementation of
15 an environmental management system at the facility for which the
16 permit, permit amendment, or permit renewal is sought. In this
17 subsection, "environmental management system" has the meaning
18 assigned by Section 5.127, Water Code.

19 SECTION 4.26. Section 382.056(o), Health and Safety Code,
20 is amended to read as follows:

21 (o) Notwithstanding other provisions of this chapter, the
22 commission may hold a hearing on a permit amendment, modification,
23 or renewal if the commission determines that the application
24 involves a facility for which the applicant's compliance history is
25 classified as unsatisfactory according to commission standards [~~in~~
26 ~~the lowest classification~~] under Sections 5.753 and 5.754, Water
27 Code, and rules adopted and procedures developed under those

1 sections.

2 SECTION 4.27. Subchapter C, Chapter 382, Health and Safety
3 Code, is amended by adding Section 382.059 to read as follows:

4 Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT
5 APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This
6 section applies to a permit amendment application submitted solely
7 to allow an electric generating facility to reduce emissions and
8 comply with a requirement imposed by Section 112 of the federal
9 Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum
10 achievable control technology. A permit amendment application
11 shall include a condition that the applicant is required to
12 complete the actions needed for compliance by the time allowed
13 under Section 112 of the federal Clean Air Act (42 U.S.C. Section
14 7412).

15 (b) The commission shall provide an opportunity for a public
16 hearing and the submission of public comment on the application in
17 the manner provided by Section 382.0561.

18 (c) Not later than the 45th day after the date the
19 application is received, the executive director shall issue a draft
20 permit.

21 (d) Not later than the 30th day after the date of issuance of
22 the draft permit under Subsection (c), parties may submit to the
23 commission any legitimate issues of material fact regarding whether
24 the choice of technology approved in the draft permit is the maximum
25 achievable control technology required under Section 112 of the
26 federal Clean Air Act (42 U.S.C. Section 7412) and may request a
27 contested case hearing before the commission. If a party requests a

1 contested case hearing under this subsection, the commission shall
2 conduct a contested case hearing and issue a final order issuing or
3 denying the permit amendment not later than the 120th day after the
4 date of issuance of the draft permit under Subsection (c).

5 (e) The commission shall send notice of a decision on an
6 application for a permit amendment under this section in the manner
7 provided by Section 382.0562.

8 (f) A person affected by a decision of the commission to
9 issue or deny a permit amendment may move for rehearing and is
10 entitled to judicial review under Section 382.032.

11 (g) This section expires on the sixth anniversary of the
12 date the administrator adopts standards for existing electric
13 generating facilities under Section 112 of the federal Clean Air
14 Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.

15 (h) The commission shall adopt rules to implement this
16 section.

17 SECTION 4.28. Section 401.110(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) In making a determination whether to grant, deny, amend,
20 renew, revoke, suspend, or restrict a license or registration, the
21 commission may consider an applicant's or license holder's
22 technical competence, financial qualifications, and compliance
23 history under the method for using ~~[evaluation of]~~ compliance
24 history developed by the commission under Section 5.754, Water
25 Code.

26 SECTION 4.29. Section 401.112(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The commission, in making a licensing decision on a
2 specific license application to process or dispose of low-level
3 radioactive waste from other persons, shall consider:

4 (1) site suitability, geological, hydrological, and
5 meteorological factors, and natural hazards;

6 (2) compatibility with present uses of land near the
7 site;

8 (3) socioeconomic effects on surrounding communities
9 of operation of the licensed activity and of associated
10 transportation of low-level radioactive waste;

11 (4) the need for and alternatives to the proposed
12 activity, including an alternative siting analysis prepared by the
13 applicant;

14 (5) the applicant's qualifications, including:

15 (A) financial and technical qualifications and
16 compliance history under the method for using ~~[evaluation of]~~
17 compliance history developed by the commission under Section 5.754,
18 Water Code, for an application to the commission; and

19 (B) the demonstration of financial
20 qualifications under Section 401.108;

21 (6) background monitoring plans for the proposed site;

22 (7) suitability of facilities associated with the
23 proposed activities;

24 (8) chemical, radiological, and biological
25 characteristics of the low-level radioactive waste and waste
26 classification under Section 401.053;

27 (9) adequate insurance of the applicant to cover

1 potential injury to any property or person, including potential
2 injury from risks relating to transportation;

3 (10) training programs for the applicant's employees;

4 (11) a monitoring, record-keeping, and reporting
5 program;

6 (12) spill detection and cleanup plans for the
7 licensed site and related to associated transportation of low-level
8 radioactive waste;

9 (13) decommissioning and postclosure care plans;

10 (14) security plans;

11 (15) worker monitoring and protection plans;

12 (16) emergency plans; and

13 (17) a monitoring program for applicants that includes
14 prelicense and postlicense monitoring of background radioactive
15 and chemical characteristics of the soils, groundwater, and
16 vegetation.

17 SECTION 4.30. Not later than the 180th day after the
18 effective date of this Act, the Texas Commission on Environmental
19 Quality shall adopt rules to implement Section 382.059, Health and
20 Safety Code, as added by this article.

21 SECTION 4.31. (a) Not later than September 1, 2012, the
22 Texas Commission on Environmental Quality by rule shall establish
23 the method for evaluating compliance history as required by Section
24 5.753(a), Water Code, as amended by this article. Until the
25 commission adopts that method, the commission shall continue in
26 effect its current standard for evaluating compliance history.

27 (b) The changes in law made by Sections 7.052 and 13.4151,

1 Water Code, as amended by this article, apply only to a violation
2 that occurs on or after the effective date of this Act. For
3 purposes of this section, a violation occurs before the effective
4 date of this Act if any element of the violation occurs before that
5 date. A violation that occurs before the effective date of this Act
6 is covered by the law in effect on the date the violation occurred,
7 and the former law is continued in effect for that purpose.

8 (c) The change in law made by Section 26.3467(d), Water
9 Code, as added by this article, applies only to a delivery of a
10 regulated substance to an underground storage tank made on or after
11 the effective date of this Act.

12 (d) The fee applicable to a delivery in Section 26.3574(b),
13 Water Code, as that subsection existed immediately before the
14 effective date of this Act, remains in effect until the Texas
15 Commission on Environmental Quality adopts and implements a fee
16 applicable to that delivery under Section 26.3574(b-1), Water Code,
17 as added by this article.

18 SECTION 4.32. Section 49.198(a), Water Code, as amended by
19 this article, applies to a district that files its annual financial
20 report on or after the effective date of this Act. A district that
21 files its annual financial report before the effective date of this
22 Act is governed by the law in effect on the date the report is filed,
23 and that law is continued in effect for that purpose.

24 ARTICLE 5. WATER RIGHTS

25 SECTION 5.01. Section 11.002(12), Water Code, is amended to
26 read as follows:

27 (12) "Agriculture" means any of the following

1 activities:

2 (A) cultivating the soil to produce crops for
3 human food, animal feed, or planting seed or for the production of
4 fibers;

5 (B) the practice of floriculture, viticulture,
6 silviculture, and horticulture, including the cultivation of
7 plants in containers or nonsoil media, by a nursery grower;

8 (C) raising, feeding, or keeping animals for
9 breeding purposes or for the production of food or fiber, leather,
10 pelts, or other tangible products having a commercial value;

11 (D) raising or keeping equine animals;

12 (E) wildlife management; ~~and~~

13 (F) planting cover crops, including cover crops
14 cultivated for transplantation, or leaving land idle for the
15 purpose of participating in any governmental program or normal crop
16 or livestock rotation procedure; and

17 (G) aquaculture, as defined by Section 134.001,
18 Agriculture Code.

19 SECTION 5.02. Section 11.031, Water Code, is amended by
20 adding Subsections (d), (e), and (f) to read as follows:

21 (d) Each person who has a water right issued by the
22 commission or who impounds, diverts, or otherwise uses state water
23 shall maintain water use information required under Subsection (a)
24 on a monthly basis during the months a water rights holder uses
25 permitted water. The person shall make the information available
26 to the commission on the commission's request.

27 (e) Except as provided by Subsection (a), the commission may

1 request information maintained under Subsection (d) only during a
2 drought or other emergency shortage of water or in response to a
3 complaint.

4 (f) Subsection (e) does not affect the authority of a
5 watermaster to obtain water use information under other law.

6 SECTION 5.03. Subchapter B, Chapter 11, Water Code, is
7 amended by adding Section 11.053 to read as follows:

8 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)
9 During a period of drought or other emergency shortage of water, as
10 defined by commission rule, the executive director by order may, in
11 accordance with the priority of water rights established by Section
12 11.027:

13 (1) temporarily suspend the right of any person who
14 holds a water right to use the water; and

15 (2) temporarily adjust the diversions of water by
16 water rights holders.

17 (b) The executive director in ordering a suspension or
18 adjustment under this section shall ensure that an action taken:

19 (1) maximizes the beneficial use of water;

20 (2) minimizes the impact on water rights holders;

21 (3) prevents the waste of water;

22 (4) takes into consideration the efforts of the
23 affected water rights holders to develop and implement the water
24 conservation plans and drought contingency plans required by this
25 chapter;

26 (5) to the greatest extent practicable, conforms to
27 the order of preferences established by Section 11.024; and

1 (6) does not require the release of water that, at the
2 time the order is issued, is lawfully stored in a reservoir under
3 water rights associated with that reservoir.

4 (c) The commission shall adopt rules to implement this
5 section, including rules:

6 (1) defining a drought or other emergency shortage of
7 water for purposes of this section; and

8 (2) specifying the:

9 (A) conditions under which the executive
10 director may issue an order under this section;

11 (B) terms of an order issued under this section,
12 including the maximum duration of a temporary suspension or
13 adjustment under this section; and

14 (C) procedures for notice of, an opportunity for
15 a hearing on, and the appeal to the commission of an order issued
16 under this section.

17 SECTION 5.04. Subchapter D, Chapter 11, Water Code, is
18 amended by adding Section 11.1273 to read as follows:

19 Sec. 11.1273. ADDITIONAL REQUIREMENT: REVIEW OF AMENDMENTS
20 TO CERTAIN WATER MANAGEMENT PLANS. (a) This section applies only
21 to a water management plan consisting of a reservoir operation plan
22 for the operation of two water supply reservoirs that was
23 originally required by a court order adjudicating the water rights
24 for those reservoirs.

25 (b) Not later than the first anniversary of the date the
26 executive director determines that an application to amend a water
27 management plan is administratively complete, the executive

1 director shall complete a technical review of the plan.

2 (c) If the executive director submits a written request for
3 additional information to the applicant, the applicant shall submit
4 the requested information to the executive director not later than
5 the 30th day after the date the applicant receives the request or
6 not later than the deadline agreed to by the executive director and
7 the applicant, if applicable. The review period required by
8 Subsection (b) for completing the technical review is tolled until
9 the date the executive director receives the requested information
10 from the applicant.

11 (d) The commission shall provide an opportunity for public
12 comment and a public hearing on the application, consistent with
13 the process for other water rights applications.

14 (e) If the commission receives a request for a hearing
15 before the period for submitting public comments and requesting a
16 hearing expires, the commission shall act on the request for a
17 hearing and, if the request is denied, act on the application not
18 later than the 60th day after the date the period expires. If a
19 request for a hearing is not submitted before the period expires,
20 the executive director may act on the application.

21 SECTION 5.05. Section 11.326, Water Code, is amended by
22 adding Subsections (g) and (h) to read as follows:

23 (g) For a water basin in which a watermaster is not
24 appointed, the executive director shall:

25 (1) evaluate the water basin at least once every five
26 years to determine whether a watermaster should be appointed; and

27 (2) report the findings and make recommendations to

1 the commission.

2 (h) The commission shall:

3 (1) determine the criteria or risk factors to be
4 considered in an evaluation under Subsection (g); and

5 (2) include the findings and recommendations under
6 Subsection (g) in the commission's biennial report to the
7 legislature.

8 ARTICLE 6. FUNDING

9 SECTION 6.01. Section 401.246(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Compact waste disposal fees adopted by the commission
12 must be sufficient to:

13 (1) allow the compact waste facility license holder to
14 recover costs of operating and maintaining the compact waste
15 disposal facility and a reasonable profit on the operation of that
16 facility;

17 (2) provide an amount necessary to meet future costs
18 of decommissioning, closing, and postclosure maintenance and
19 surveillance of the compact waste disposal facility and the compact
20 waste disposal facility portion of the disposal facility site;

21 (3) provide an amount to fund local public projects
22 under Section 401.244;

23 (4) provide a reasonable rate of return on capital
24 investment in the facilities used for management or disposal of
25 compact waste at the compact waste disposal facility; ~~and~~

26 (5) provide an amount necessary to pay compact waste
27 disposal facility licensing fees, to pay compact waste disposal

1 facility fees set by rule or statute, and to provide security for
2 the compact waste disposal facility as required by the commission
3 under law and commission rules; and

4 (6) provide an amount necessary to support the
5 activities of the Texas Low-Level Radioactive Waste Disposal
6 Compact Commission.

7 SECTION 6.02. Subchapter F, Chapter 401, Health and Safety
8 Code, is amended by adding Section 401.251 to read as follows:

9 Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT
10 COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal
11 compact commission account is an account in the general revenue
12 fund.

13 (b) The commission shall deposit in the account the portion
14 of the fee collected under Section 401.245 that is calculated to
15 support the activities of the Texas Low-Level Radioactive Waste
16 Disposal Compact Commission as required by Section 4.04(4), Texas
17 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of
18 this code).

19 (c) Money in the account may be appropriated only to support
20 the operations of the Texas Low-Level Radioactive Waste Disposal
21 Compact Commission.

22 SECTION 6.03. Sections 5.701(n) and (p), Water Code, are
23 amended to read as follows:

24 (n)(1) Each provider of potable water or sewer utility
25 service shall collect a regulatory assessment from each retail
26 customer as follows:

27 (A) A public utility as defined in Section 13.002

1 ~~[of this code]~~ shall collect from each retail customer a regulatory
2 assessment equal to one percent of the charge for retail water or
3 sewer service.

4 (B) A water supply or sewer service corporation
5 as defined in Section 13.002 ~~[of this code]~~ shall collect from each
6 retail customer a regulatory assessment equal to one-half of one
7 percent of the charge for retail water or sewer service.

8 (C) A district as defined in Section 49.001 ~~[of~~
9 ~~this code]~~ that provides potable water or sewer utility service to
10 retail customers shall collect from each retail customer a
11 regulatory assessment equal to one-half of one percent of the
12 charge for retail water or sewer service.

13 (2) The regulatory assessment may be listed on the
14 customer's bill as a separate item and shall be collected in
15 addition to other charges for utility services.

16 (3) The ~~[commission shall use the]~~ assessments
17 collected under this subsection may be appropriated by a rider to
18 the General Appropriations Act to an agency with duties related to
19 water and sewer utility regulation or representation of residential
20 and small commercial consumers of water and sewer utility services
21 solely to pay costs and expenses incurred by the agency
22 ~~[commission]~~ in the regulation of districts, water supply or sewer
23 service corporations, and public utilities under Chapter 13~~[, Water~~
24 ~~Code]~~.

25 (4) The commission shall annually use a portion of the
26 assessments to provide on-site technical assistance and training to
27 public utilities, water supply or sewer service corporations, and

1 districts. The commission shall contract with others to provide
2 the services.

3 (5) The commission by rule may establish due dates,
4 collection procedures, and penalties for late payment related to
5 regulatory assessments under this subsection. The executive
6 director shall collect all assessments from the utility service
7 providers.

8 (6) The commission shall assess a penalty against a
9 municipality with a population of more than 1.5 million that does
10 not provide municipal water and sewer services in an annexed area in
11 accordance with Section 43.0565, Local Government Code. A penalty
12 assessed under this paragraph shall be not more than \$1,000 for each
13 day the services are not provided after March 1, 1998, for areas
14 annexed before January 1, 1993, or not provided within 4-1/2 years
15 after the effective date of the annexation for areas annexed on or
16 after January 1, 1993. A penalty collected under this paragraph
17 shall be deposited to the credit of the water resource management
18 account to be used to provide water and sewer service to residents
19 of the city.

20 (7) The regulatory assessment does not apply to water
21 that has not been treated for the purpose of human consumption.

22 (p) Notwithstanding any other law, fees collected for
23 deposit to the water resource management account under the
24 following statutes may be appropriated and used to protect water
25 resources in this state, including assessment of water quality,
26 reasonably related to the activities of any of the persons required
27 to pay a fee under:

1 (1) Subsection (b), to the extent those fees are paid
2 by water districts, and Subsections (e), (f), and (n);

3 (2) [~~Sections 13.4521 and 13.4522, or~~

4 ~~(3)] Section 54.037(c); or~~

5 (3) Section 367.010, Health and Safety Code.

6 SECTION 6.04. Subchapter L, Chapter 13, Water Code, is
7 repealed.

8 SECTION 6.05. The changes in law made by Section 5.701,
9 Water Code, as amended by this article, apply only to a fee assessed
10 on or after January 1, 2012. A fee assessed before January 1, 2012,
11 is governed by the law in effect at the time the fee was assessed,
12 and the former law is continued in effect for that purpose.

13 ARTICLE 7. WATER AND SEWER UTILITIES

14 SECTION 7.01. Subchapter E, Chapter 13, Water Code, is
15 amended by adding Section 13.1325 to read as follows:

16 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On
17 request, the state agency with jurisdiction over rates charged by
18 water and sewer utilities shall provide, at a reasonable cost,
19 electronic copies of all information provided to the agency under
20 Sections 13.016, 13.043, and 13.187 to the extent that the
21 information is available and is not confidential. Copies of all
22 information provided to the agency shall be provided to the Office
23 of Public Utility Counsel, on request, at no cost to the office.

24 ARTICLE 8. ABOLITION OF THE ON-SITE WASTEWATER TREATMENT RESEARCH
25 COUNCIL

26 SECTION 8.01. The heading to Chapter 367, Health and Safety
27 Code, is amended to read as follows:

1 CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH [~~COUNCIL~~]

2 SECTION 8.02. Section 367.001, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 367.001. DEFINITIONS. In this chapter:

5 (1) "Commission" means the Texas Commission on
6 Environmental Quality [~~Natural Resource Conservation Commission~~].

7 (2) [~~"Council" means the On-site Wastewater Treatment~~
8 ~~Research Council.~~

9 [~~(3)~~] "On-site wastewater treatment system" means a
10 system of treatment devices or disposal facilities that:

11 (A) is used for the disposal of domestic sewage,
12 excluding liquid waste resulting from the processes used in
13 industrial and commercial establishments;

14 (B) is located on the site where the sewage is
15 produced; and

16 (C) produces not more than 5,000 gallons of waste
17 a day.

18 SECTION 8.03. Section 367.007, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 367.007. ADMINISTRATION. (a) [~~The council is not an~~
21 ~~advisory body to the commission. The commission, at the direction~~
22 ~~of the council, shall implement council decisions.~~

23 [~~(b) The council may enter into an interagency contract with~~
24 ~~the commission to provide staff and other administrative support as~~
25 ~~required to improve the quality of wastewater treatment and reduce~~
26 ~~the cost of providing wastewater treatment to consumers.~~

27 [~~(c)~~] The commission [~~council~~] may accept grants and

1 donations from other sources to supplement the fees collected under
2 Section 367.010. Grants and donations shall be deposited to the
3 credit of the water resource management [~~on-site wastewater~~
4 ~~treatment research~~] account and may be disbursed as the commission
5 [~~council~~] directs and in accordance with Section 367.008.

6 (b) [~~(d)~~] Administrative and facilities support costs are
7 payable from the water resources management [~~on-site wastewater~~
8 ~~treatment research~~] account.

9 [~~(e) The council may award grants and enter into contracts~~
10 ~~in its own name and on its own behalf.~~]

11 SECTION 8.04. Section 367.008, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The
14 commission [~~council~~] shall establish procedures for awarding
15 competitive grants and disbursing grant money.

16 (b) The commission [~~council~~] may award competitive grants
17 to:

18 (1) support applied research and demonstration
19 projects by accredited colleges and universities in this state, by
20 other governmental entities, or by acceptable public or private
21 research centers regarding on-site wastewater treatment technology
22 and systems applicable to this state that are directed toward
23 improving the quality of wastewater treatment and reducing the cost
24 of providing wastewater treatment to consumers; and

25 (2) enhance technology transfer regarding on-site
26 wastewater treatment by using educational courses, seminars,
27 symposia, publications, and other forms of information

1 dissemination.

2 (c) The commission shall seek the advice of relevant experts
3 when choosing research topics, awarding grants, and holding
4 educational conferences associated with activities under this
5 chapter. [~~The council may award grants or make other expenditures~~
6 ~~authorized under this chapter only after the comptroller certifies~~
7 ~~that the on-site wastewater treatment research account contains~~
8 ~~enough money to pay for those expenditures.~~]

9 SECTION 8.05. Section 367.009, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 367.009. APPROPRIATIONS. Money collected and
12 appropriated for the purposes of this chapter shall be disbursed as
13 the commission [~~council~~] directs and in accordance with Section
14 367.008.

15 SECTION 8.06. Section 367.010(d), Health and Safety Code,
16 is amended to read as follows:

17 (d) The fee proceeds shall be deposited to the credit of the
18 water resources management [~~on-site wastewater treatment research~~]
19 account.

20 SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,
21 367.006, and 367.011, Health and Safety Code, are repealed.

22 SECTION 8.08. (a) On the effective date of this Act, the
23 Texas Commission on Environmental Quality shall assume the
24 administration of all grants of the On-site Wastewater Treatment
25 Research Council in existence on that date.

26 (b) The Texas Commission on Environmental Quality shall
27 assume all contracts held by the On-site Wastewater Treatment

1 Research Council on the effective date of this Act, including all
2 rights and obligations associated with the contracts.

3 ARTICLE 9. RATE NOTIFICATION

4 SECTION 9.01. Section 13.043(i), Water Code, is amended to
5 read as follows:

6 (i) The governing body of a municipally owned utility or a
7 political subdivision, within 60 [~~30~~] days after the date of a final
8 decision on a rate change, shall provide individual written notice
9 to each ratepayer eligible to appeal who resides outside the
10 boundaries of the municipality or the political subdivision. The
11 notice must include, at a minimum, the effective date of the new
12 rates, the new rates, and the location where additional information
13 on rates can be obtained. The governing body of a municipally owned
14 utility or a political subdivision may provide the notice
15 electronically if the utility or political subdivision has access
16 to a ratepayer's e-mail address.

17 SECTION 9.02. Section 13.187(b), Water Code, is amended to
18 read as follows:

19 (b) A copy of the statement of intent shall be mailed, sent
20 by e-mail, or delivered to the appropriate offices of each affected
21 municipality, and to any other affected persons as required by the
22 regulatory authority's rules.

23 ARTICLE 10. CONTESTED CASE HEARINGS

24 SECTION 10.01. Section 5.115(b), Water Code, is amended to
25 read as follows:

26 (b) At the time an application for a permit or license under
27 this code is filed with the executive director and is

1 administratively complete, the commission shall give notice of the
2 application to any person who may be affected by the granting of the
3 permit or license. A state agency that receives notice under this
4 subsection may submit comments to the commission in response to the
5 notice but may not contest the issuance of a permit or license by
6 the commission. For the purposes of this subsection, "state
7 agency" does not include a river authority.

8 SECTION 10.02. Sections 5.228(c) and (d), Water Code, are
9 amended to read as follows:

10 (c) The executive director shall [~~may~~] participate as a
11 party in contested case permit hearings before the commission or
12 the State Office of Administrative Hearings to:

13 (1) provide information [~~for the sole purpose of~~
14 ~~providing information~~] to complete the administrative record; and

15 (2) support the executive director's position
16 developed in the underlying proceeding. [~~The commission by rule~~
17 ~~shall specify the factors the executive director must consider in~~
18 ~~determining, case by case, whether to participate as a party in a~~
19 ~~contested case permit hearing. In developing the rules under this~~
20 ~~subsection the commission shall consider, among other factors:~~

21 [~~(1) the technical, legal, and financial capacity of~~
22 ~~the parties to the proceeding,~~

23 [~~(2) whether the parties to the proceeding have~~
24 ~~participated in a previous contested case hearing,~~

25 [~~(3) the complexity of the issues presented, and~~

26 [~~(4) the available resources of commission staff.]~~

27 (d) In a contested case hearing relating to a permit

1 application, the executive director or the executive director's
2 designated representative may not rehabilitate the testimony of a
3 witness unless the witness is a commission employee [~~testifying for~~
4 ~~the sole purpose of providing information to complete the~~
5 ~~administrative record~~].

6 SECTION 10.03. Subchapter H, Chapter 5, Water Code, is
7 amended by adding Section 5.315 to read as follows:

8 Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN
9 TESTIMONY. In a contested case hearing delegated by the commission
10 to the State Office of Administrative Hearings that uses prefiled
11 written testimony, all discovery must be completed before the
12 deadline for the submission of that testimony, except for water and
13 sewer ratemaking proceedings.

14 SECTION 10.04. Section 5.228(e), Water Code, is repealed.

15 SECTION 10.05. (a) Section 5.115(b), Water Code, as
16 amended by this article, applies only to an application for the
17 issuance, amendment, extension, or renewal of a permit or license
18 that is received by the Texas Commission on Environmental Quality
19 on or after the effective date of this Act. An application that is
20 received before that date is governed by the law in effect at the
21 time the application is received, and the former law is continued in
22 effect for that purpose.

23 (b) The changes in law made by this article apply to a
24 proceeding before the State Office of Administrative Hearings that
25 is pending or filed on or after September 1, 2011.

26 ARTICLE 11. EFFECTIVE DATE

27 SECTION 11.01. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 2694 was passed by the House on April 20, 2011, by the following vote: Yeas 109, Nays 40, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2694 on May 17, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2694 on May 28, 2011, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2694

I certify that H.B. No. 2694 was passed by the Senate, with amendments, on May 12, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2694 on May 28, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor