

SUBJECT: Amending TNRCC water fees

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 5 ayes — Counts, Walker, Cook, King, R. Lewis
0 nays
1 present, not voting — Moffat
3 absent — Corte, Culberson, Puente

SENATE VOTE: On final passage, May 6 — 30-1 (Nixon)

WITNESSES: *(On House companion, HB 2333)*
For — Ken Kramer, Sierra Club; Wade Stansell, Association of Electric Companies of Texas

Against — Bill Riley, City of College Station; Terrace Stewart, City of Dallas

On — Dan Pearson and Ken Petersen, Texas Natural Resource Conservation Commission; Monte Akers, Texas Municipal League; Rick Conner, Bryan Public Work's Department; Dwayne Hargesheimer, Texas Municipal Utility Association; Chris Lippe, City of Austin

BACKGROUND : The Texas Natural Resource Conservation Commission (TNRCC) imposes the following water fees:

- wastewater treatment inspection fees on wastewater discharge permit holders;
- regional quality assessment fees on water users and wastewater permit holders to fund water quality assessments;
- safe drinking water fees on persons who own, operate, or maintain public drinking water systems.

The amount of fees that can be collected by TNRCC for the Clean Rivers Act regional water quality assessments is capped at \$5 million annually.

The state is seeking National Pollutant Discharge Elimination System (NPDES) program delegation from the federal Environmental Protection Agency (EPA), which would free wastewater discharge permit holders in the state from having to obtain both state and federal permits. Certain sections of the Water Code are effective upon NPDES delegation. Under those sections, TNRCC is prohibited from increasing wastewater treatment inspection fees on treatment works owned by local governments before August 31, 1999.

DIGEST: SB 1340 would raise the cap on annual wastewater treatment inspection fees that wastewater discharge permit holders pay TNRCC from \$11,000 to \$25,000. Once Texas was delegated NPDES authority, the cap would increase from \$25,000 to \$40,000.

The prohibition on increasing inspection fees for wastewater treatment works owned by local governments would last two years after the date of NPDES delegation. The bill would specify that the fee increase would be for the purpose of paying additional expenses necessary to obtain and administer the NPDES program.

The bill also would limit annual wastewater treatment inspection fees for any permit holder to \$300,000. TNRCC could adjust this limit to account for construction or purchase of additional wastewater facilities subject to fees. Adjustments would have to be proportional to the number and capacity of facilities acquired. Annual wastewater treatment inspection fees could not exceed \$500,000 for the largest public water system subject to the fee, although TNRCC could adjust this limit to account for growth or expansion of the system proportional to the number of connections and change in system capacity.

TNRCC could consolidate wastewater discharge fees and water quality assessment fees but could not collect in excess of \$5 million from the fees — the current cap — and would have to ensure that any water quality assessment fees were allocated for the Clean Rivers Program. SB 1340 also would allow wastewater discharge fees to be used by TNRCC for water quality programs.

The bill would broaden the authorized uses of fees levied on public drinking water supplies. In addition to other uses, the funds could supplement other money available to pay TNRCC expenses for oversight and technical assistance to certain water and wastewater utilities to ensure the availability of safe and adequate water and wastewater service; technical assistance to groundwater conservation districts; water resource management programs and the regulation of water rights; and oversight and technical assistance to various surface water districts.

SB 1340 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

Water fees assessed by TNRCC are insufficient to fund the state's water programs, and dedicated general revenue funding has not kept pace with the needs of these programs. The state must find a way to fund water programs in Texas. TNRCC recently estimated that it needed a net increase of approximately \$8 million just to fund programs at the levels required by current statute. SB 1340 could help the agency fund some of these vital programs and address deficiencies in permitting, field inspections, water rights compliance inspections, data management, and public drinking water system inspections.

Due to funding limitations, TNRCC inspects less than half of the wastewater plants in the state annually and just over half of the drinking water systems each year. SB 1340 would increase funding for water quality programs to help ensure that state waters would be maintained at a level that would protect both aquatic habitat and human health.

Consolidating wastewater treatment inspection fees and regional water quality assessment fees would allow TNRCC greater flexibility and efficiency in funding water programs. Raising the cap on fees would raise the upper limit on how much could be assessed for the largest industrial and municipal facilities so that increased costs for water quality could be distributed equally without having an unfair impact on small towns and businesses.

No single existing water revenue source, apart from general revenue, is broadly based enough to address TNRCC's water funding problems, so a

number of options must be tried in concert with each other. SB 1340 is one of those options and would help the state fund additional inspections of waste treatment facilities and carry out water quality programs.

The inadequacy of water funding was underscored by the drought last year, when normal water permitting and inspection activities had to be curtailed so TNRCC staff could handle water emergencies. Allowing TNRCC to consolidate wastewater treatment inspection fees and regional water quality assessment fees would give the agency more flexibility to fund water quality programs.

SB 1340 would cap the maximum fees paid by the largest cities under the expanded authority. Large cities may have multiple permits and could be overwhelmed by the new fee increases if a cap was not in place.

OPPONENTS
SAY:

The fee increases proposed by SB 1340 would be just the latest in a 10-year series of water and environmental fees that have driven up costs for cities. Cities have been required to raise their fees for drinking water, solid waste, sludge management, air quality, stormwater, and other environmental purposes. The cap on wastewater treatment inspection fees, for example, has gone from \$2,000 per permit in 1985 to \$11,000 under current law; SB 1340 would propose to increase it to \$25,000 and then to \$40,000 after NPDES delegation. This is simply too onerous a burden for many cities to bear.

The purpose of the wastewater treatment inspection fee should not be changed. The original purpose of the fee was to fund wastewater discharge and treatment laws, and it should be limited to those purposes and not allowed to be used for water quality programs as well. It is true that the state desperately needs money to fund water programs, but it would be more equitable to impose a state sales tax on water so all water users could shoulder the burden of water programs and pay their share directly proportional to the water they used. The state should not require local governments to fund state agencies — it should be the other way around.

Public drinking water fees should be used only for public drinking water purposes already defined by statute and should not be used for the other purposes proposed in the bill. Unlike wastewater treatment inspection fees,

drinking water fees are not capped by statute; by allowing them to be used to assist wastewater utilities and ground and surface water districts, TNRCC could impose fee increases by rule to cover the costs of various programs without ever needing legislative approval.