

SUBJECT: Applicability of prior law affecting certain water utilities

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 8 ayes — Puente, Callegari, Campbell, R. Cook, Geren, Hamilton,  
Hardcastle, Wolens

0 nays

1 absent — Hope

WITNESSES: None

BACKGROUND: Water Code, ch. 13 governs the regulation of water and sewer utilities. The Texas Commission on Environmental Quality (TCEQ) has the authority to regulate and supervise the business of every water and sewer utility within its jurisdiction. The governing body of a municipality has exclusive original jurisdiction over water and sewer services within the incorporated limits of the municipality.

Art. 10 of SB 2 by Brown, enacted by the 77th Legislature, amended the chapter to:

- require utilities to make a local payment station available to customers in each county where a utility provided service or within 20 miles of a residential customer's residence;
- allow utilities to consolidate multiple water systems under a single rate schedule only if the facilities are similar and the schedule promotes water conservation;
- require TCEQ to establish by rule a preference that rates under a single schedule be consolidated by region;
- allow an alternative ratemaking methodology to help make water or sewer service more affordable;
- extend the waiting period before a utility could implement new rates after notifying customers of its intent to change rates; and
- prohibit a retail water company from purchasing wholesale water service from an affiliated supplier unless certain conditions were met.

SB 2 specified that art. 10 applies to a proceeding in which TCEQ had not issued a final order before the bill's effective date, provided that the article does not apply to a retail public utility for which a final order in a rate proceeding was issued prior to January 1, 2001, if the public utility is the same as, controlled by, or an affiliate of the retail public utility for which a final order was issued prior to January 1, 2001. It specified that art. 10 could not be construed to permit a public utility to increase rates without TCEQ approval.

**DIGEST:**

HB 3034 would eliminate language in the applicability statute of art. 10 so that it applied without qualification to a proceeding in which TCEQ had not issued a final order before the effective date of the article.

The bill would specify that it was a clarification of existing law and would not imply that current law could be construed as being inconsistent with the law as amended by the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

The bill would amend the applicability of art. 10 in SB 2 to reflect the intentions of the 77th Legislature. It would eliminate an extra provision that was added to the applicability statute during conference committee. The provision was intended to exempt a specific water company from the requirements in art. 10. When TCEQ began to adopt rules to implement art. 10, however, the agency discovered that the exemption actually excluded nearly all water companies regulated by TCEQ from the new requirements. According to the agency's interpretation, only newer water companies would be subject to art. 10. Because of the ambiguity, TCEQ has not adopted rules to implement the requirements in the article. The bill would clarify the law to apply to water utilities as the 77th Legislature intended.

Clarifying the law would allow TCEQ to move ahead with setting needed limits on a water utility's ability to impose a statewide water rate. In a past rate case before TCEQ, a utility applied to impose a single tariff for thousands of customers of many systems in different regions. The statewide rate could

have increased water rates by an average of 29 percent for customers in hundred of systems and by 200 percent for some systems.

The requirements in art. 10 do not require utilities to establish separate rate schedules for every system they operate. Art. 10 allows consolidation of similar systems and encourages regional consolidation. Once TCEQ adopts the rules, customers could benefit from consolidation without having to subsidize rates for customers on the other side of the state. For example, customers along the Gulf Coast would share costs of improvements to systems in their area but would not have to pay for improvements to systems in West Texas. Determining what systems were sufficiently similar to warrant consolidation would not burden small independent utilities, but it would require larger utilities to provide more research and information on a proposed consolidation during rate proceedings.

**OPPONENTS  
SAY:**

The bill would allow TCEQ to implement onerous restrictions on water utilities. The restrictions could require water utilities to establish separate rate schedules for every system they operated. This would be especially burdensome and inefficient for utilities that operate many systems, as they would have to file separate rate cases and maintain a separate set of books for each system. Moreover, imposing the requirements would add an administrative burden to rate proceedings and would create uncertainty for utilities. Determining what systems were sufficiently similar to warrant consolidation would require a lengthy hearing process at some point in the rate proceedings. Utilities would not know which of their systems they could consolidate until the proceeding was completed.