

SUBJECT: Increasing the maximum amount of TCEQ's annual water quality fee

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 8 ayes — Ritter, Callegari, Corte, Frost, T. King, Laubenberg, Martinez
Fischer, D. Miller

0 nays

3 absent — Creighton, Lucio, Smithee

WITNESSES: For — (*Registered, but did not testify:* Donna Chatham, Association of Rural Communities in Texas; Myron Hess, National Wildlife Federation; Brett Kerr, Calpine Corporation; Chris Miller, Association of Electric Companies in Texas; Cyrus Reed, Sierra Club, Lone Star Chapter; Mance Zachary, Luminant)

Against — Susan Bandy, City of Houston; Raj Bhattarai, City of Austin Water Utility; Steve Clouse, San Antonio Water System; Hector Gonzalez, El Paso Water Utilities; Debbie Hastings, Texas Oil and Gas Association; Christina Wisdom, Texas Chemical Council; (*Registered, but did not testify:* Andy Barrett, Air Products and Chemicals, Inc.; Trey Blocker, Texas Association of Manufacturers; Larry Casto, City of Dallas; Mark Gipson, Devon Energy; Kinnan Golemon, Shell Oil; Steve Hazlewood, Dow Chemical; Thomas Hodge, Canyon Lake Water Service Company; Billy Howe, Texas Farm Bureau; Robert Kelly, Tatiana Olea, SouthWest Water Company; Warren Mayberry, DuPont; Cindy McCauley, LyondellBasell Industries; Mike Merony, Huntsman Corporation; Julie Moore, Occidental Petroleum; Todd Morgan, Texas Forest Industries Council and American Forest and Paper Association; Steve Perry, Chevron USA)

On — Dean Robbins, Texas Water Conservation Association; Carlos Rubinstein, Texas Commission on Environmental Quality)

BACKGROUND: Water Code, sec. 26.0291 authorizes annual water quality fees imposed by the Texas Commission on Environmental Quality (TCEQ) on:

- each wastewater discharge permit holder for each permit held; and,
- each water user in proportion to the user's water rights.

These fees are referred to as the consolidated water quality fee and the water user fee, respectively, and, according to Water Code, sec. 26.0291(b) are used broadly to supplement TCEQ's efforts to inspect waste treatment facilities and enforce state laws and agency rules governing:

- waste discharge and waste treatment facilities, including the cost of administering the national pollutant discharge elimination system (NPDES) program;
- the water resources of this state, including TCEQ's water quality management programs; and,
- any other water resource management programs reasonably related to the activities of the persons required to pay a fee.

DIGEST:

HB 1433 would increase the annual maximum amount of the consolidated water quality fee and water user fee from \$75,000 to \$200,000 for each permit or contract for wastewater discharge or waste treatment facility that holds a water right for the use of water by the facility.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 1433 would provide support to the Texas Commission on Environmental Quality (TCEQ) to fund its various water quality programs in an equitable manner across all permit and contract holders by increasing the statutory cap on the consolidated water quality (CWQ) fee and the water user fee. TCEQ is primarily a fee-funded agency, with 88 percent of its funds derived from fees. Historically, 98 percent of general revenue appropriated to TCEQ has been used to support water-related activities. As its general revenue has declined from \$51 million in fiscal 2004-05 to roughly \$20 million in the current biennium and TCEQ's financial obligations have increased, the agency has been forced to increase its fees in order to operate its water programs at their current levels.

The CWQ fee increase that HB 1433 would authorize would be a logical and prudent step, as it would generate \$18.5 million of the \$41 million (45 percent) in fees TCEQ collects from its 27 water fees. As TCEQ does not have adequate funds to cover the costs of its water programs for the upcoming biennium, and \$15 million of its fiscal 2010-11 appropriation is

contingent upon it assessing an equal amount in fees, it will be forced to raise its fees.

HB 1433 would allow TCEQ to spread equitably the fee increase across all permit and contract holders according to their ability to pay, use of resources, and ability to pollute. There are 65 entities, including large cities, their utilities, and large businesses, now at the current annual cap of \$75,000 per permit holder. While there would be 36 entities at the proposed cap of \$200,000, under current TCEQ rules, only 22 permits would be assessed the maximum rate. If the cap remains at its current level and fees are increased, small and mid-sized municipalities and industries would bear a disproportionate share of the burden.

OPPONENTS
SAY:

HB 1433 would unfairly burden large municipalities and industries, entities that are the economic engine of the state. As many large cities and business have multiple permits, they would be faced with multiple fee increases. These fee increases would be passed along to customers at a time of economic downturn and in which utility rates have already increased. Under the proposed fee increases, local governments would face \$2.4 million in cost increases.

While no one is disputing that TCEQ's water programs should be properly funded, any new funds should come from a legislative appropriation.

If a fee increase is to be made, it should be done incrementally to mitigate the impact on ratepayers and to allow entities to budget properly.

NOTES:

The companion bill, SB 2316 by Averitt, was considered in a public hearing by the Senate Natural Resources Committee on April 9 and left pending.

According to the fiscal note, HB 1433 would provide the authority for an additional \$4.5 million to be annually deposited in TCEQ's Water Resource Management Account.