

SUBJECT: Increasing the penalty for failing to report use of surface water to TCEQ

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: For — *(Registered, but did not testify:* Matthew Haertner, Public Citizen; Myron Hess, National Wildlife Federation; Ken Kramer, Sierra Club - Lone Star Chapter; Chloe Lieberknecht, The Nature Conservancy; David Weinberg , Texas League of Conservation Voters; Rita Beving)

Against — *(Registered, but did not testify:* Chris Howe)

On — Stephanie Bergeron Perdue, Texas Commission on Environmental Quality

BACKGROUND: Water Code, sec. 11.031 requires that an annual report be submitted to the Texas Commission on Environmental Quality (TCEQ) by each person who has a water right issued by TCEQ or who impounded, diverted, or otherwise used state water during the preceding calendar year.

The report contains all the information required by TCEQ in administering the water law and in making inventory of the state’s water resources. No report is required of domestic or livestock users unless that person holds a water right.

A person who fails to file an annual report with the TCEQ is liable for a penalty of \$25, plus \$1 per day for each day the report is late, with a maximum penalty of \$150. The state can sue to recover the penalty.

Water use information also must be maintained on a monthly basis during the months a water rights holder uses permitted water. The information must be made available at TCEQ’s request.

DIGEST: HB 2615 would increase the penalty for a person who failed to file an annual water use report with TCEQ to a maximum of \$5,000 per day, rather than \$25, plus \$1 each day with a maximum of \$150. This penalty also would be imposed for not complying with a TCEQ request for monthly information on water use.

This bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 2615 appropriately would raise the penalty for failure to report timely to TCEQ critical information it needs to manage the state's water resources. Texas recently experienced the worst one-year drought on record, which led to senior calls being made in certain basins. For TCEQ to adequately respond to senior calls, it needs to know how much water is being used. Unfortunately, approximately 40 percent of water rights holders do not report their annual water use, as required by statute.

Since 1977, the penalty for not reporting water use has been \$25 plus \$1 each additional day the report is late, with a maximum penalty of only \$150. Increasing the penalty to a maximum of \$5,000 for every day of not reporting would strongly encourage compliance with this reporting requirement as the state tries to balance water availability with demands under drought conditions.

While critics express concern about such a large increase in the penalty, \$5,000 per day would be the maximum fine. Below that ceiling, TCEQ would have discretion in determining the exact amount of a penalty imposed for noncompliance. Further, this penalty structure would be in line with other penalties that TCEQ has authority to impose with regard to water rights.

OPPONENTS SAY: HB 2615 would impose an enormous penalty increase for failing to report water use. While non-reporting is a problem, increasing the penalty from a maximum of \$150 in total to a maximum of \$5,000 per day would be too steep an initial hike. A more incremental increase would be more appropriate.