be suspended, and said Rule is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 23, 1969, by a non-record vote; House concurred in Senate amendments on May 29, 1969, by a non-record vote; passed by the Senate, as amended, on May 28, 1969: Yeas 18, Nays 9 and 1 pair.

Approved June 13, 1969.

Effective Sept. 1, 1969, 90 days after date of adjournment.

WATER QUALITY ACT—REVISION

CHAPTER 760

S. B. No. 147

An Act amending, revising, and rearranging the Texas Water Quality Act of 1967 (Article 7621d—1, Vernon's Texas Civil Statutes), to improve the structure of the Act and to provide for more effective control of water quality in this state; continuing the current board members in office; providing for severability; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 313, Acts of the 60th Legislature, Regular Session, 1967 (Article 7621d—1, Vernon's Texas Civil Statutes), is amended [47] to read as follows:

"Subchapter A. General Provisions

Short title

"Section 1.01. This Act may be cited as the Texas Water Quality Act.

Policy and purpose

"Sec. 1.02. It is the policy of this state and the purpose of this Act to maintain the quality of the water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state; to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

Definitions

"Sec. 1.03. As used in this Act, unless the context requires a different definition:

"(1) 'person' means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity;

47. Vernon's Ann.Civ.St. art. 7621d—1, §§ 1.01–1.13; 2.01–2.17; 3.01–3.33; 4.01–4.05; 5.01–5.05; 6.01.

"(2) 'board' means the Texas Water Quality Board;

"(3) 'executive director' means the executive director of the Texas Water Quality Board;

"(4) 'water' or 'water in the state' means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico within the territorial limits of the State of Texas, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially within or bordering the state or within the jurisdiction of the state;

"(5) 'waste' means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section;

"(6) 'sewage' means water-borne human waste and waste from domestic activities, such as washing, bathing and food preparation;

"(7) 'municipal waste' means water-borne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system;

"(8) 'recreational waste' means water-borne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area;

"(9) 'agricultural waste' means water-borne liquid, gaseous, or solid substances that arise from the agriculture industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products; the term 'agricultural waste' does not include tailwater or runoff water from irrigation, or rainwater runoff from cultivated or uncultivated range lands, pasture lands and farm lands, and these items are, if they may cause impairment of the quality of the water in the state, included in the term 'other waste';

"(10) 'industrial waste' means water-borne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business;

"(11) 'other waste' means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state; 'other waste' also includes tailwater or runoff water from irrigation, or rainwater runoff from cultivated or uncultivated range lands, pasture lands and farm lands, that may cause impairment of the quality of the water in the state;

"(12) 'pollution' means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose;

"(13) 'sewer system' means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste;

"(14) 'treatment facility' means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing or stabilizing waste;

"(15) 'disposal system' means any system for disposal of waste, including sewer systems and treatment facilities;

"(16) 'local government' means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution;

"(17) 'permit' means an order issued by the board in accordance with the procedures prescribed in this Act establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water, and specifying the conditions under which the discharge may be made;

"(18) 'to discharge' includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of; or to allow, permit or suffer any such act or omission; and

"(19) 'rule' includes regulation.

Ownership of underground water

"Sec. 1.04. Nothing in this Act affects ownership rights in underground water.

Prior actions of pollution control board validated

"Sec. 1.05. (a) All permits, orders, rules, regulations, water quality criteria, water quality standards, water quality requirements, and other actions issued, taken, performed, or established by the Texas Water Pollution Control Board under Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes), to the extent authorized under that Act, are validated and remain in effect unless and until amended or superseded by order of the Texas Water Quality Board, and are administered by and under the jurisdiction of the Texas Water Quality Board. Any permit or order of the Texas Water Pollution Control Board, created under Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes), in litigation on the effective date of this Act shall not be affected by this Section, and the rights of the complaining party are expressly reserved.

"(b) Where the Texas Water Pollution Control Board is referred to in any statute, rule, or regulation, the reference shall be construed to mean the Texas Water Quality Board.

Board as principal authority

"Sec. 1.06. The Texas Water Quality Board is the principal authority in the state on matters relating to the quality of the water in the state. The board has the responsibility for establishing a water quality sampling and monitoring program for the State of Texas. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the board.

Duty of water development board

"Sec. 1.07. The Texas Water Development Board shall investigate all matters concerning the quality of groundwater in the state and shall report its findings and recommendations to the board. Nothing in this Act affects the powers and duties of the Texas Water Development Board under Chapter 82, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 7621b, Vernon's Texas Civil Statutes). The Texas

Water Development Board and the Texas Water Well Drillers Board shall continue to exercise the authority granted to them in Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes).

Duty of the parks and wildlife department

"Sec. 1.08. The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this Act to the extent that any violation affects aquatic life and wildlife, as provided in Subsection (b) of Section 4.03 of this Act.

Duty of health department

"Sec. 1.09. The State Department of Health shall continue to apply the authority vested in it by Chapter 234, Acts of the 49th Legislature, 1945, as last amended by Chapter 446, Acts of the 57th Legislature, Regular Session, 1961 (Article 4477—1, Vernon's Texas Civil Statutes), in the abatement of nuisances resulting from pollution not otherwise covered by this Act. The State Department of Health shall investigate and make recommendations to the board concerning the health aspects of matters related to the quality of the water in the state.

Duty of railroad commission

"Sec. 1.10. The Texas Railroad Commission is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas. The Texas Railroad Commission may issue permits for the discharge of waste resulting from these activities, and discharge of waste into any water in this state resulting from these activities shall meet the water quality standards established by the board. Nothing in this Act affects the powers and duties of the Texas Railroad Commission under Chapter 82, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 7621b, Vernon's Texas Civil Statutes).

Effect on private remedies

"Sec. 1.11. Nothing in this Act affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance or to recover damages.

Secret processes, etc.

"Sec. 1.12. Nothing in this Act requires any person to disclose any classified data of the federal government or any confidential information relating to secret processes or economics of operation.

Repeal of other laws

"Sec. 1.13. All general, local, and special laws enacted before the effective date of this Act are repealed to the extent that those laws give local governments the authority to set and enforce water quality criteria other than those adopted by the board under this Act.

"Subchapter B. Administrative Provisions

Texas water quality board

"Sec. 2.01. The Texas Water Quality Board is an agency of the state.

Members of board

"Sec. 2.02. The board is composed of seven members, chosen as follows: Three are appointed by the governor with the advice and consent of the Senate; and the other four are the executive director of the Texas Water Development Board, the state commissioner of health, the executive director of the Parks and Wildlife Department, and the chairman of the Texas Railroad Commission. Each of the latter four shall perform the duties of a member of the board as additional duties required of him in his other official capacity.

Terms of appointed members

"Sec. 2.03. The members appointed by the governor hold office for staggered terms of six years, with the term of one member expiring on the 1st day of September in each odd-numbered year. Each appointed member holds office until his successor is appointed and has qualified.

Qualification by members; vacancies; records

"Sec. 2.04. (a) A member appointed by the governor while the Senate is in session is qualified to serve on the board after his nomination has been confirmed by the Senate and upon taking the Constitutional oath of office. A member appointed by the governor while the Senate is not in session is qualified to serve upon taking the Constitutional oath of office, and serves until the expiration of his term or until his nomination is rejected by the Senate, or is not confirmed by the Senate at the next regular or special session thereafter.

"(b) If a vacancy occurs in the office of an appointed member of the board, the position shall be filled by a person appointed by the governor in the same manner as for a regular appointment, and the person so appointed shall serve only to the end of the unexpired term and until his successor is appointed and has qualified.

"(c) The official records of the board shall reflect the date each member's certificate of appointment was issued by the secretary of state, the date he took the oath of office, the person who administered the oath, the date the appointive term began, and the date the term expires.

Per diem; expenses

"Sec. 2.05. (a) A member of the board is not entitled to a salary for duties performed as a member of the board; but each member appointed by the governor is entitled to $25 each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business.

"(b) Each member appointed by the governor is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive director. Each of the other members is entitled to reimbursement for travel and other necessary expenses incurred in performing official du-

ties for the board, out of funds made available for those purposes to the state agency of the member.

Personal representatives

"Sec. 2.06. (a) The executive director of the Texas Water Development Board, the executive director of the Parks and Wildlife Department, the state commissioner of health, and the chairman of the Texas Railroad Commission may each delegate to a personal representative from his office the authority and duty to represent him on the board; but by this delegation a member is not relieved of responsibility for the acts and decisions of his representative.

"(b) While engaged in performing official board duties as authorized by a member, a personal representative stands in the place of the member for the purpose of participating in and voting on matters at board meetings and hearings, and performing other business of the board. He has all the powers and duties of the member, including the power to take testimony at board hearings.

"(c) A personal representative may serve as either chairman or vice-chairman of the board.

"(d) A personal representative is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties for the board to the same extent and in the same manner as the member he represents.

Board officers

"Sec. 2.07. The board shall elect a chairman and a vice-chairman to serve two-year terms beginning on February 1 of each odd-numbered year.

Board meetings

"Sec. 2.08. (a) The chairman, or in his absence the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and the vice-chairman from any meeting of the board, the members of the board present may select one of their number to serve as chairman for the meeting.

"(b) The board shall have regular meetings at times specified by a majority vote of the board.

"(c) The chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least two members of the board.

"(d) A majority of the board constitutes a quorum to transact business.

Executive director

"Sec. 2.09. The board shall employ an executive director. The executive director is the chief administrative officer of the board. In addition to his other duties, he shall keep full and accurate minutes of all transactions and proceedings of the board; he is the custodian of all of the files and records of the board.

Deputy director; staff

"Sec. 2.10. (a) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume his duties and functions.

"(b) The executive director shall employ the staff authorized by the board. In addition to its own staff, the board may by interagency contract utilize, and upon request of the board shall receive, the assistance of any state-supported educational institution, experimental station, or other agency.

"(c) When provided by legislative appropriation, the board is authorized to pay the costs of transporting and delivering the household goods and effects of employees transferred by the board from one permanent station to another when, in the judgment of the board, the transfer will serve the best interest of the state.

Funds from other state agencies

"Sec. 2.11. Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the board any amount mutually agreed on by the board and the agency, subject to the approval of the governor.

Gifts and grants

"Sec. 2.12. The board may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties.

Special fund

"Sec. 2.13. Money received by the board under Section 2.11 or 2.12 of this code shall be deposited in the state treasury and credited to a special fund. The board may use this fund for salaries, wages, professional and consulting fees, planning and construction grants, loans and contracts, travel expenses, equipment, and other necessary expenses incurred in carrying out its duties under this Act, as provided by legislative appropriation.

Documents, etc., public property

"Sec. 2.14. All information, documents, and data collected by the board in the performance of its duties are the property of the state. Subject to the limitations of Section 1.12 of this Act, all records of the board are public records open to inspection by any person during regular office hours.

Copies of documents, proceedings, etc.

"Sec. 2.15. Subject to the limitations of Section 1.12 of this Act, on the application of any person, the board shall furnish certified or other copies of any proceedings or other official act of record, or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman of the board or the executive director is admissible as evidence in any court or administrative proceeding. The board shall prescribe in its rules the fees which shall be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Any other Acts concerning fees for copies of records do not apply to the board, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in

Article 3913, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 446, Acts of the 59th Legislature, Regular Session, 1965.

Biennial reports

"Sec. 2.16. The board shall make biennial written reports to the governor and to the Legislature and shall include in each report a statement of its activities.

Seal

"Sec. 2.17. The board shall adopt a seal.

"Subchapter C. Powers and Duties

In general

"Sec. 3.01. The board shall administer the provisions of this Act and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this Act. Waste discharges or impending waste discharges, under the purview of this Act, are, at all times, subject to such reasonable rules, regulations, or orders as the board, in the public interest, may adopt or issue. The board has the powers and duties specifically prescribed by this Act and all other powers necessary or convenient to carry out its responsibilities.

State water quality plan

"Sec. 3.02. The board shall prepare and develop a general, comprehensive plan for the control of water quality in the state.

Research, investigations

"Sec. 3.03. The board shall conduct, or have conducted, any research and investigations it considers advisable and necessary for the discharge of its duties under this Act.

Power to enter property

"Sec. 3.04. The members, employees, and agents of the board have the right to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of any water in the state. Any member, employee, or agent who, acting under the authority in this section, enters private property which has management in residence shall notify management, or the person then in charge, of his presence and exhibit proper credentials. Members, employees or agents entering private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection. Should any member, employee or agent of the board be refused the right to enter in or upon such public or private property, the board may have the remedies authorized in Section 4.02 of this Act.

Power to examine records

"Sec. 3.05. The members, employees and agents of the board may examine during regular business hours any records or memoranda pertaining to the operation of any sewer system, treatment facility, or disposal system, or pertaining to any discharge of waste.

Enforcement proceedings

"Sec. 3.06. The board, or the executive director when authorized by the board, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, orders, permits, or other decisions of the board.

Cooperation

"Sec. 3.07. The board shall:

"(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of the water in the state;

"(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

"(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions; and

"(4) cooperate with the governments of the United States and other states, and with official or unofficial agencies and organizations, with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements; when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 466 et seq.), or other federal legislation having a similar purpose, the representation shall include an officer or employee of the board.

Contracts, instruments

"Sec. 3.08. The board may make contracts and execute instruments that are necessary or convenient to the exercise of its power or the performance of its duties.

Rule-making

"Sec. 3.09. The board shall make and enforce rules reasonably required to effectuate the provisions of this Act, including rules governing procedure and practice before the board. The board may amend any rule it makes. In making and amending rules, the board shall comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252—13, Vernon's Texas Civil Statutes).

Orders

"Sec. 3.10. The board is authorized to issue orders and make determinations as may be necessary to effectuate the purposes of this Act. The board shall set forth the findings on which it bases any order granting or denying any special relief requested of the board, or involving a determination following a hearing on an alleged violation of Section 4.01 of this Act, or directing a person to perform or refrain from performing a certain act or activity. The executive director shall attest the orders of the board. The board, or the executive director when authorized by the board, may issue temporary orders relating to the discharge of

waste without notice and hearing, or with such notice and hearing as the board or the executive director, in its or his judgment, deems practicable under the circumstances when this is necessary to enable action to be taken more expeditiously than is otherwise provided by this Act so as to effectuate the policy and purposes of this Act. If the board or the executive director issues a temporary order under authority of this section without a hearing before the board, the order shall fix a time and place for a hearing to be held before the board, which shall be held as soon after the temporary order is issued as is practicable. The requirements of Section 3.13 of this Act as to the time for notice, newspaper notice and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as in the judgment of the board or the executive director is practicable under the circumstances. At the hearing, the board shall affirm, modify or set aside the temporary order. If the nature of the board's action requires, further proceedings shall be conducted as appropriate under other applicable provisions of this Act.

Hearing powers

"Sec. 3.11. The board may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses, and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders or other actions of the board.

Delegation of hearing powers

"Sec. 3.12. (a) Except for those hearings required to be held before the board under Section 3.10 of this Act, the board may authorize the executive director to call and hold hearings on any subject on which the board may hold a hearing. The board may also authorize the executive director to delegate to one or more employees of the board, or to professional or technical personnel under contract to the board, the authority to hold any hearing called by the executive director. The board may establish the qualifications required of the persons who may be delegated the authority by the executive director to hold hearings. At any hearing called by the executive director, he or the person delegated the authority by him to hold the hearing is empowered to administer oaths and receive evidence.

"(b) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the board.

Notice of hearings; continuance

"Sec. 3.13. (a) Except as otherwise specified in Section 3.10 of this Act, the provisions of this section apply to all hearings conducted pursuant to this Act.

"(b) Notice of the hearing shall describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

"(c) Notice of the hearing shall be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the

hearing, the board has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

"(d) If notice of the hearing is required by this Act to be given to a person, the notice shall be served personally or mailed to the person at his last address known to the board, not less than 20 days before the date set for the hearing. If the party is not an individual, the notice may be given to any officer, agent, or legal representative of the party.

"(e) The individual or individuals holding the hearing (hereafter in this subsection called the hearing body) shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (d) of this section at a reasonable time prior to the new setting, but it is not necessary to publish a newspaper notice of the new setting.

Water quality standards

"Sec. 3.14. The board, by order, shall set water quality standards for the water in the state, and may amend the standards from time to time. The board has the sole and exclusive authority to set water quality standards for all water in the state.

Hearings on standards; consultation

"Sec. 3.15. Before setting or amending water quality standards, the board shall:

"(1) hold public hearings at which any person may appear and present evidence, under oath, pertinent for consideration by the board; and

"(2) consult with the Texas Water Development Board and the Texas Water Rights Commission to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

Hearings on standards; notice

"Sec. 3.16. Notice of a hearing under Section 3.15 of this Act shall be given to each of the following that the board believes may be affected:

"(1) each local government whose boundary is contiguous to the water in question, or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

"(2) the holders of rights to appropriate water from the water in question, as shown by the records of the Texas Water Rights Commission; and

"(3) the holders of permits from the board to discharge waste into or adjacent to the water in question.

Standards to be published

"Sec. 3.17. The board shall publish its water quality standards and amendments and shall make copies available to the public on written request.

Board may issue permits

"Sec. 3.18. The board may issue permits and amendments to permits for the discharge of waste into or adjacent to water in the state. A person desiring a permit or to amend a permit shall submit an application to the board containing all information reasonably required by the board or the executive director.

Action on application

"Sec. 3.19. (a) Except as provided in Subsection (b) of this section, a public hearing shall be held on an application for a permit or to amend a permit. Notice of the hearing shall be given to the persons who in the judgment of the board may be affected.

"(b) An application to amend a permit to improve the quality of waste authorized to be discharged may be set for consideration and may be acted on by the board at a regular meeting, without the necessity of holding a public hearing, if the applicant does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge. Notice of the application shall be mailed to the mayor and health authorities for the city or town, and the county judge and health authorities for the county, in which the waste is or will be discharged, at least 10 days before the board meeting, and they may present information to the board on the application.

Conditions of permit; amendment; revocation and suspension

"Sec. 3.20. (a) In each permit the board shall prescribe the conditions on which it is issued, including:

"(1) the duration of the permit;

"(2) the location of the point of discharge of the waste;

"(3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;

"(4) the character and quality of waste that may be discharged under the permit; and

"(5) any monitoring and reporting requirements prescribed by the board for the permittee.

"(b) After a public hearing, notice of which shall be given to the permittee, the board may require the permittee, from time to time, for good cause, to conform to new or additional conditions. The board shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the board may grant additional time.

"(c) A permit does not become a vested right in the permittee; it may be revoked or suspended for good cause, after a public hearing, notice of which shall be given to the permittee, on any of the following grounds:

"(1) the permittee has failed or is failing to comply with the conditions of the permit;

"(2) the permit is subject to cancellation or suspension under Subsection (d) of Section 3.29 of this Act;

"(3) the permit or operations under the permit have been abandoned; or

"(4) the permit is no longer needed by the permittee.

"(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the board.

Permit: effect on recreational water

"Sec. 3.21. In considering the issuance of a permit to discharge effluent into any body of water having an established recreational standard, the board shall consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water; and the board may consider the odor as one of the elements of the water quality of the effluent.

Septic tanks

"Sec. 3.22. (a) Whenever it appears that, because of the nature of the soil or drainage in an area, the use of septic tanks in the area should be controlled or prohibited to prevent pollution, the board may hold a public hearing in or near the area to determine whether an order should be entered controlling or prohibiting the installation or use of septic tanks in the area. Before entering such an order, the board shall consult with the state commissioner of health for recommendations concerning the impact of the use of septic tanks in the area on public health. If the board finds after the hearing and after consulting with the state commissioner of health that an order controlling or prohibiting the use of septic tanks in the area is necessary to prevent pollution that may directly or indirectly injure the public health, the board may enter an order to do one or more of the following:

"(1) limit the number and kind of septic tanks which may be used in the area;

"(2) prohibit the installation and use of additional septic tanks in the area; or

"(3) provide for a gradual and systematic reduction of the number or kind of septic tanks in the area.

"The board may also provide in the order for a system of licensing the installation of additional septic tanks in the area, in which case no person may install a septic tank in the area without a license.

"(b) Whenever it appears to the commissioners court of any county that, because of the nature of the soil or drainage in an area in the county, the use of septic tanks in that area should be controlled or prohibited to prevent pollution that may directly or indirectly injure the public health, the county may proceed in the same manner and in accordance with the same procedures as the board to hold a hearing and enter an order, resolution, or other regulation controlling or prohibiting the installation or use of septic tanks in that area. The order, resolution or regulation may provide the same restrictions and requirements as is authorized for an order of the board entered under Subsection (a) of this section. Before the order, resolution, or other regulation becomes effective, the county shall submit it to the board and obtain the board's written approval.

Rating of waste disposal systems

"Sec. 3.23. After consultation with the State Department of Health, the board shall provide by rule for a system of approved ratings for municipal waste disposal systems and such other waste disposal systems

as the board may designate. The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the board on highways approaching or within the boundaries of the municipality, subject to such reasonable restrictions and requirements as may be established by the Texas Highway Department. In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the board at such locations as may be approved or established by the board, subject to such reasonable restrictions and requirements as may be imposed by any governmental entity having jurisdiction. If the waste disposal system fails to continue to achieve an approved rating, the board may revoke the privilege. On due notice from the board, the owner or operator of the system shall remove the signs.

Approval of disposal system plans

"Sec. 3.24. This section applies to all sewer systems, treatment facilities, and disposal systems, except those public sewage disposal systems, the plans for which are subject to review and approval by the State Department of Health under Article 4477—1, Section 12, Vernon's Texas Civil Statutes, or by the Texas Water Rights Commission under statutes pertaining to water districts. Every person who proposes to construct or materially alter the efficiency of any sewer system, treatment facility, or disposal system to which this section applies, before beginning construction thereof, shall submit completed plans and specifications therefor to and obtain the approval of the plans by the board or, when authorized by the board, the executive director. The board, or the executive director when authorized by the board, shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the board.

Federal grants

"Sec. 3.25. The board may execute agreements with the Department of the Interior, the Federal Water Pollution Control Administration, or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The board may accept federal funds for these purposes and for other purposes consistent with the objectives of this Act and may use the funds as prescribed by law or as provided by agreement.

State grants and loans

"Sec. 3.26. (a) The board may use money provided by legislative appropriation to make grants or loans to municipalities and interstate agencies, as those terms are defined in the Federal Water Pollution Control Act (33 U.S.C. Sec. 466 et seq.), and to local governments, and the board may itself expend such money, for construction of treatment works, as defined in the federal act, and for construction of sewer systems, treatment facilities, and disposal systems.

"(b) The board may use money provided by legislative appropriation to make grants or interest-free loans to, or to contract with, local govern-

ments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for a period of not more than three years, and the board may itself expend such money, for developing effective, comprehensive water quality control and pollution abatement plans for designated areas of the state. Any loan made under this subsection shall be repaid when the resulting construction is begun.

"(c) The board may not make any construction grant or loan under Subsection (a) of this section unless or until:

"(1) the project is approved by the board and included in the state water quality plan;

"(2) the board determines that the project is entitled to priority over other eligible projects on the basis of financial need as well as water quality needs;

"(3) the recipient of the grant or loan agrees to pay the difference between the amount of the grant or loan and the cost of the project, which difference must be at least 20 percent of the estimated reasonable cost of the project as determined by the board; and

"(4) the recipient has made provision satisfactory to the board to assure proper and efficient operation and maintenance of the project after the construction is completed.

"(d) In determining the desirability of construction projects and of approving state grants, loans or contracts for them, the board shall consider:

"(1) the public benefits to be derived from the project and the propriety of state participation;

"(2) the benefits to be derived from the protection and conservation of the water and other natural resources in the state;

"(3) the relation of the ultimate cost of constructing and maintaining the project to the public interest and the public necessity for the project; and

"(4) the adequacy of provisions made or proposed to assure proper and efficient operation and maintenance of the project after the construction is completed.

"(e) Money granted, loaned or contracted for construction shall be used exclusively for construction costs on the approved project.

Construction

"Sec. 3.27. As used in Sections 3.25 and 3.26 of this Act, 'construction' includes:

"(1) preliminary planning to determine the economic and engineering feasibility of the project;

"(2) engineering, architectural, legal, fiscal, and economic investigations and studies;

"(3) surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of the project;

"(4) erection, building, acquisition, alteration, remodeling, improvement, and extension; and

"(5) inspection and supervision.

Control of grant, loan, and contract programs

"Sec. 3.28. In order to implement and administer the federal and state grant, loan, and contract programs and to assure proper disbursement of and accounting for the public funds, the board shall adopt rules and procedures for the necessary engineering review and supervision,

fiscal control, and fund accounting. The rules and procedures shall be consistent with federal law to the extent the board considers it applicable. The fiscal-control and fund-accounting procedures are supplemental to other procedures prescribed by state law.

Regional or area-wide systems

"Sec. 3.29. (a) The Legislature finds and declares that it is necessary to the health, safety and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state. Within any standard metropolitan statistical area in the state, the board is authorized to implement this policy in the manner and in accordance with the procedure provided in the following subsections of this section. In those portions of the state not within a standard metropolitan statistical area, the board shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems; in such portions of the state, the board may not use the procedure specified in the following subsections of this section to implement this policy, but this does not affect or diminish any authority which the board may otherwise have and exercise under other provisions of this Act. As used in this subsection, the term 'standard metropolitan statistical area' means an area consisting of a county or one or more contiguous counties which is officially so designated by the United States Bureau of the Budget or by any agency which succeeds to the Bureau or to this designation function of the Bureau.

"(b) Whenever it appears to the board that, because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area, a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the board may hold a public hearing in or near the area to determine whether the policy stated in Subsection (a) of this section should be implemented in that area. Notice of the hearing shall be given to the local governments who in the judgment of the board may be affected. If after the hearing the board finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the board may enter an order defining the area in which such a system or systems are necessary or desirable.

"(c) At the same hearing held under Subsection (b) of this section, or at a subsequent hearing held in or near an area defined under Subsection (b) of this section, the board may consider whether to designate a regional or area-wide system or systems to serve all or part of the waste collection, treatment or disposal needs of the area defined. Notice of the hearing shall be given to the local governments and the owners and operators of any waste collection, treatment and disposal systems who in the judgment of the board may be affected. If after the hearing the board finds that there is an existing or proposed system or systems then capable, or which will in the reasonably foreseeable future be capable, of serving the waste collection, treatment or disposal needs of all or part of the area defined, and that the owners or operators of the system or systems are agreeable to providing the services, the board

may enter an order designating the waste collection, treatment or disposal system or systems to serve all or part of the area defined.

"(d) After the board has entered an order as authorized in Subsection (c) of this section, the board may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the board may be affected, take any one or more of the following actions:

"(1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area defined in an order entered under Subsection (b) of this section to use a regional or area-wide system designated under Subsection (c) of this section for the disposal of his waste;

"(2) refuse to grant any permits for the discharge of waste, or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system, in an area defined in an order entered under Subsection (b) of this section unless the permits or plans comply and are consistent with any orders entered under this section; or

"(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Subsection (b) of this section.

"The exercise of the authority granted to the board in this Subsection (d) shall be predicated on findings by the board that there is an existing or proposed regional or area-wide system designated under Subsection (c) of this section which is capable, or which will in the reasonably foreseeable future be capable, of serving the waste collection, treatment or disposal needs of the person or persons who are the subject of an action taken by the board under this subsection; that the owner or operator of the designated regional or area-wide system is agreeable to providing the service; and that it is feasible for the service to be provided on the basis of waste collection, treatment and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenues from any then-existing or proposed waste collection, treatment or disposal systems in which the person or persons who are the subject of an action taken by the board under this subsection have an interest.

"(e) Upon motion of any interested party and after a public hearing, the board may set reasonable rates for the furnishing of waste collection, treatment, or disposal services to any person by a regional or area-wide system designated under Subsection (c) of this section. Notice of the hearing shall be given to the owner or operator of the designated regional or area-wide system, the person requesting the hearing, and any other person who, in the judgment of the board, may be affected by the action taken by the board as a result of the hearing. After the hearing the board shall enter an order setting forth its findings and the rates which may be charged for the services by the designated regional or area-wide system.

Accidental discharges and spills

"Sec. 3.30. (a) As used in this section:

"(1) 'accidental discharge' means an act or omission through which waste or other substances are inadvertently discharged into water in the state;

"(2) 'spill' means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run or otherwise enter water in the state; and

"(3) 'other substances' means substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.

"(b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the office of the board as soon as possible and not later than 24 hours after the occurrence.

"(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances, and which pose serious or significant pollutional threats, are subject to such reasonable rules or orders establishing safety and preventive measures as the board may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

"(d) The provisions in this section are cumulative of the other provisions in this Act relating to waste discharges. Nothing in this section exempts any person from complying with or being subject to any other provision of this Act.

Control of certain waste discharges by rule

"Sec. 3.31. Whenever the board determines that the quality of water in an area is adversely affected or threatened by the combined effects of several relatively small-quantity discharges of wastes being made for which it is not practical to issue individual permits, or that the general nature of a particular type of activity which produces a waste discharge is such that requiring individual permits is unnecessarily burdensome both to the waste discharger and the board, the board may by rule regulate and set the requirements and conditions for such discharges of waste.

Health hazards

"Sec. 3.32. The board may use any means provided by this Act to prevent a discharge of waste that is injurious to public health.

Monitoring and reporting

"Sec. 3.33. The board may prescribe reasonable requirements for a person making waste discharges to monitor and report on his waste collection, treatment and disposal activities. When in the judgment of the board significant water quality management benefits will result or water quality management needs justify, the board may also prescribe reasonable requirements for any person or persons making waste discharges to monitor and report on the quality of any water in the state which the board has reason to believe may be materially affected by the waste discharges.

"Subchapter D. Prohibition Against Pollution; Enforcement

Unauthorized discharges prohibited

"Sec. 4.01. (a) Except as authorized by a rule, regulation, permit or other order issued by the board, or the executive director when authorized by the board, no person may:

"(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

"(2) discharge other waste into or adjacent to any water in the state which in itself, or in conjunction with any other discharge or activity, causes, continues to cause, or will cause pollution of any of the water in the state; or

"(3) commit any other act or engage in any other activity, which in itself, or in conjunction with any other discharge or activity, causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Texas Railroad Commission, in which case this Paragraph (3) does not apply.

"(b) In implementing Paragraphs (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the waters that might be affected.

"(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this Act or of any rule, regulation, permit, or other order of the board.

"(d) Any person who violates any provision of this Act or of any rule, regulation, permit or other order of the board is subject to a civil penalty of not less than $50.00 nor more than $1,000.00 for each day of violation and for each act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.

Enforcement by board

"Sec. 4.02. (a) Whenever it appears that a person has violated or is violating, or is threatening to violate, any provision of this Act, or of any rule, regulation, permit, or other order of the board, then the board, or the executive director when authorized by the board, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50.00 nor more than $1,000.00 for each act of violation and for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, permit, or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

"(b) At the request of the board, or the executive director when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Enforcement by others

"Sec. 4.03. (a) Whenever it appears that a violation or threat of violation of any provision of Section 4.01 of this Act, or of any rule, regulation, permit, or other order of the board has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the board, may cause a suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (a) of Section 4.02 of this Act against the person who committed, or is committing or threatening to commit, the violation. This power may not be exercised by a local government unless its governing body adopts a

resolution authorizing the exercise of the power. In a suit brought by a local government under this Subsection (a), the board is a necessary and indispensable party.

"(b) Whenever it appears that a violation or a threat of violation of any provision of Section 4.01 of this Act or of any rule, regulation, permit, or other order of the board has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the board, may cause suit to be instituted in a district court for injunctive relief or civil penalties, or both, as authorized in Subsection (a) of Section 4.02 of this Act, against the person who committed or is committing, or is threatening to commit, the violation. The suit shall be brought in the name of the State of Texas through the county attorney or the district attorney, as appropriate, of the county where the defendant resides or in the county where the violation or threat of violation occurs.

Venue and procedure

"Sec. 4.04. (a) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs.

"(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, permit, or other order of the board, the court may grant the board, the Parks and Wildlife Department, or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

"(c) A suit brought under this Act shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

"(d) Either party may appeal from a final judgment of the court as in other civil cases.

"(e) All civil penalties recovered in suits instituted under this Act by the State of Texas through the board or the Parks and Wildlife Department shall be paid to the General Revenue Fund of the State of Texas.

"(f) All civil penalties recovered in suits instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments first instituting the suit on the other, with 50 percent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 percent equally to the local government or governments first instituting the suit.

Act of God, war, etc.

"Sec. 4.05. Any pollution, or any discharge of waste without a permit or in violation of a permit, caused by an act of God, war, strike, riot, or other catastrophe is not a violation of this Act.

"Subchapter E. Authority of Local Governments

Inspection of public water

"Sec. 5.01. A local government may inspect the public water in its area and determine whether or not:

"(1) the quality of the water meets the state water quality standards adopted by the board;

"(2) persons discharging effluent into the public water located in the areas over which the local government has jurisdiction have obtained permits for the discharge of the effluent; and

"(3) persons who have permits are making discharges in compliance with the requirements of the permits.

Recommendations to board

"Sec. 5.02. A local government may make written recommendations to the board as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

Power to enter property

"Sec. 5.03. A local government has the same power as the board has under Section 3.04 of this Act to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the board. When requested by the board, the results of any inspection or investigation made by the local government shall be transmitted to the board for its consideration.

Enforcement action

"Sec. 5.04. A local government may bring an enforcement action under this Act in the manner provided in Subchapter D of this Act for local governments.

Cooperative agreements

"Sec. 5.05. A local government may execute cooperative agreements with the board or other local governments:

"(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

"(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

"Subchapter F. Judicial Review

Appeal of board action

"Sec. 6.01. (a) A person affected by any ruling, order, decision, or other act of the board may appeal by filing a petition in a district court of Travis County.

"(b) The petition must be filed within 30 days after the date of the board's action, or, in the case of a ruling, order, or decision, within 30 days after its effective date.

"(c) Service of citation on the board must be accomplished within 30 days after the date the petition is filed. Citation may be served on the executive director or the deputy director.

"(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within 18 months after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

"(e) In an appeal of a board action other than cancellation or suspension of a permit, the issue is whether the action is invalid, arbitrary, or unreasonable.

"(f) An appeal of the cancellation or suspension of a permit shall be tried in the same manner as appeals from the justice court to the county court."

Sec. 2. The three members of the Texas Water Quality Board appointed under the provisions of Section 4(a) of Chapter 313, Acts of the 60th Legislature, Regular Session, 1967 (Article 7621d—1, Vernon's Texas Civil Statutes), who are in office when this Act goes into effect shall continue in office as the appointed members of the Texas Water Quality Board; Howard V. Rose, the member appointed to the term which began in November 1963, and who was redesignated by the Governor as the member representing general public interests on November 23, 1965, shall serve for a period ending September 1, 1969; Jerry L. Brownlee, the member appointed to the term which began in November 1965, shall serve for a period ending September 1, 1971; and, Gordon Fulcher, the member appointed to the term which began in November 1967, shall serve for a period ending September 1, 1973. A person appointed as a member following the expiration of the term of office of a member who is in office when this Act goes into effect shall serve during a six-year term as provided in Section 2.03 of this Act.

Sec. 3. Severability Clause. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

Sec. 4. Emergency Clause. The importance to the public of the amendments in this Act creates an emergency and imperative public necessity demanding the suspension of the Constitutional Rule requiring bills to be read on three several days in each House, and the same is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 25, 1969: Yeas 27, Nays 0; May 23, 1969, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 23, 1969, House granted request of the Senate; May 27, 1969, Senate adopted Conference Report: Yeas 29, Nays 0; passed the House on May 21, 1969, with amendments: Yeas 137, Nays 7; May 23, 1969, House granted request of the Senate for appointment of Conference Committee; May 30, 1969, House adopted Conference Report by a non-record vote.

Approved June 14, 1969.

Effective Sept. 1, 1969, 90 days after date of adjournment.