

BILL ANALYSIS

Senate Research Center

S.B. 1874
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Natural Resources
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As Filed

DIGEST

Two emergencies encountered by the Texas Natural Resource Conservation Commission (commission) in 1996 prompted an examination of the agency's authority regarding emergency and temporary orders. First, the agency discovered that it lacked the authority to grant a temporary disposal authorization when a large manufacturing facility experienced a tank leak during a downpour. Despite the threat to waters from the state, the agency was unable to authorize the facility to utilize an onsite injection well. Similarly, Texas experienced a severe drought in 1996, during which several municipal water systems experienced difficulties in obtaining enough water to provide adequate service. At the same time, some water rights went unused. The commission discovered that it lacked the statutory authority to effect a temporary transfer of rights or uses in severe emergencies. In addition, the agency has found that there exists a wide variation between program areas in the power to issue and requirements for issuing emergency and temporary orders.

S.B. 1874 would set forth a general process for issuance of emergency and temporary orders, including requirements for notice, hearing, and application; incorporates the existing requirements for specific program areas for emergency and temporary orders, including criteria for issuance of orders; and fills in the gaps in agency authority to issue emergency and temporary orders.

PURPOSE

As proposed, S.B. 1874 amends and consolidates into one chapter the general process for the issuance by the Texas Natural Resource Conservation Commission (commission) of emergency and temporary orders, including requirements for notice, hearing, and application. In addition, this bill incorporates existing requirements for specific commission program areas for emergency and temporary orders.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission under SECTION 1 (Sections 5.401(c) and (l), 5.402(e), Water Code) and SECTION 18 (Section 401.056, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 5, Water Code, by adding Subchapter K, as follows:

SUBCHAPTER K. EMERGENCY AND TEMPORARY ORDERS

Sec. 5.401. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS. (a) Authorizes the Texas Natural Resource Conservation Commission (commission) to issue orders or emergency mandatory, permissive, or prohibitory orders, temporarily issue permits by temporary or emergency order, or temporarily suspend or amend permit conditions by temporary or emergency order for the purposes and in the manner provided by this subchapter. Sets forth provisions regarding the issuance of emergency and temporary orders issued under this subchapter.

Sec. 5.402. EMERGENCY ORDERS, PERMITS FOR DIVERSION AND USE OF

WATER, AND AMENDMENTS TO WATER RIGHTS; TEMPORARY TRANSFERS OF USE OF WATER RIGHTS. Authorizes the commission, except as provided by Section 5.403 of this code, by emergency order, to issue a permit for the division and use of water, an order, or an amendment to an existing water right if it finds that emergency conditions exist which present an imminent threat to the public health, safety, and welfare or the environment and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization. Sets forth provisions applicable if an imminent threat to the public health, safety, and welfare or the environment exists which requires emergency action before the commission can take action as provided by Subsection (a) of this section and there are no feasible alternatives. Provides that the requirements of Section 11.132 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency order under this section, but such general notice of the hearing shall be given as the commission considers practicable under this circumstances. Sets forth provisions regarding the granting of an emergency order under this section for the temporary transfer and use of all or part of a surface water right for other than domestic or municipal use to a retail or wholesale water supplier for domestic or municipal use. Sets forth provisions regarding the person granted an emergency order under Subsection (d).

Sec. 5.403. EMERGENCY SUSPENSION OF PERMIT CONDITIONS RELATING TO BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES. Authorizes the commission, by emergency or temporary order, to suspend permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses when the commission finds that an emergency exists that cannot practicably be resolved in other ways. Sets forth additional provisions regarding such suspension of a permit condition.

Sec. 5.404. EMERGENCY WORKS SAFETY ORDERS. Authorizes the commission to issue an emergency order, either mandatory or prohibitory in nature, directing the owner of a dam, levee, or other water-storage or flood-control work to repair, modify, maintain, dewater, or remove a work under certain conditions.

Sec. 5.405. EMERGENCY ORDERS TO COMPEL WATER OR SEWER SERVICE. Authorizes the commission to issue an emergency order for certain purposes.

Sec. 5.406. EMERGENCY ORDERS FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes the commission to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 11.4132, and provides that notice of the action is adequate under certain conditions.

Sec. 5.407. EMERGENCY ORDERS FOR RATE INCREASES IN CERTAIN SITUATIONS. Authorizes the commission, notwithstanding the requirements of Section 13.187, to authorize an emergency rate increase for a utility for which a person has been appointed under Section 5.406 or 13.4132 or for which a receiver has been appointed under Section 13.412 under certain conditions. Sets forth additional provisions regarding emergency rates under this section.

Sec. 5.408. TEMPORARY AND EMERGENCY ORDERS AND AUTHORIZATIONS TO DISCHARGE UNTREATED OR PARTIALLY TREATED WASTEWATER. Authorizes the commission to issue an emergency or a temporary order relating to the discharge of waste or pollutants into or adjacent to water in the state when this is necessary to enable action to be taken more expeditiously than is otherwise provided by Chapter 26 to effectuate the policy and purposes of that chapter, if the commission makes certain findings. Requires a person desiring a temporary or an emergency order under this section to submit a sworn written application to the commission under Section 5.401(d) that must also contain certain information.

Sec. 5.409. EMERGENCY ORDERS CONCERNING UNDERGROUND OF ABOVEGROUND STORAGE TANKS. Authorizes the commission to issue an emergency

order to the owner or operator of an underground or aboveground storage tank regulated under Chapter 26 prohibiting the owner from allowing or continuing a release or threatened release and requiring the owner to take the actions necessary to eliminate the release or threatened release, if the commission makes certain findings.

Sec. 5.410. EMERGENCY ADMINISTRATIVE ORDERS TO PERSONS RESPONSIBLE FOR SOLID WASTE. Authorizes the commission or the executive director to issue emergency administrative orders under Sections 361.272 and 361.274, Health and Safety Code, in the manner provided by this subchapter.

Sec. 5.411. EMERGENCY ORDERS CONCERNING ACTIVITIES OF SOLID WASTE MANAGEMENT. Authorizes the commission to issue an emergency order concerning an activity of solid waste management under its jurisdiction, even if that activity is not covered by a permit, if the commission makes certain findings.

Sec. 5.412. EMERGENCY ORDERS CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEMS. Authorizes the commission to issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission makes certain findings. Sets forth provisions applicable if the emergency order issued under this section is adopted without notice or hearing.

Sec. 5.413. ORDERS ISSUED UNDER AIR EMERGENCIES. Sets forth provisions applicable if the commission makes certain findings relating to air pollution. Sets forth provisions applicable if the commission makes certain findings relating to emissions. Sets forth additional provisions regarding air emergencies.

Sec. 5.414. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE. Authorizes the commission to issue an emergency order authorizing immediate action for the addition, replacement, or repair of facilities or control equipment necessitated by a catastrophe occurring in this state and the emission of air contaminants during the addition, replacement, or repair of those facilities, under certain conditions. Sets forth requirements for an order under this section. Sets forth requirements for a person applying for an emergency order and related provisions. Defines "catastrophe."

Sec. 5.415. EMERGENCY ORDERS UNDER SECTION 401.056, HEALTH AND SAFETY CODE. Authorizes the commission to issue an emergency order under Section 401.056, Health and Safety Code, in the manner provided by this subchapter.

Sec. 5.416. EMERGENCY ORDERS FOR CORRECTIVE ACTION AND MEASURES. Authorizes the commission to issue an emergency order under Section 401.270, Health and Safety Code, to certain persons, if the commission makes certain findings. Authorizes an emergency order to be issued under this section for certain purposes. Sets forth requirements for an emergency order issued under this section. Sets forth provisions applicable if the order issued under this section is adopted without notice or hearing.

SECTION 2. Amends Section 12.052, Water Code, to require the commission to issue an emergency order under Chapter 5K of this code. Deletes existing Subsections (d) and (e) regarding dam conditions. Makes conforming changes.

SECTION 3. Amends Section 13.041(d), Water Code, to authorize the commission to issue an emergency order under Chapter 5K of this code. Deletes provisions regarding emergency order to compel a water or sewer service provider to take certain actions.

SECTION 4. Amends Section 13.235, Water Code, to authorize the commission to issue an emergency order under Chapter 5K of this code, rather than issue an emergency order with or without a hearing under Section 13.041 of this code.

SECTION 5. Amends Section 13.4132(b), Water Code, to authorize the commission to issue an

emergency order appointing a person and authorizing an emergency rate increase under Chapter 5K of this code. Deletes text regarding the issuance of an emergency order if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 6. Amends Section 16.236, Water Code, as follows:

Sec. 16.236. New heading: CONSTRUCTION OF LEVEE WITHOUT APPROVAL OF PLANS; LEVEE SAFETY. Requires the commission to make and enforce rules and orders and to perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of levees located in this state. Sets forth provisions applicable if the owner of a levee that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply with the 30-day period following the date of the commissioner's order or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order. Authorizes the commission to issue an emergency order under Chapter 5K of this code. Provides that nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner or operator of a levee of the legal duties, obligations, or liabilities incident to ownership or operation.

SECTION 7. Amends Section 26.0191, Water Code, to authorize the commission to issue temporary or emergency orders relating to the discharge of waste or pollutants under Chapter 5K of this code. Deletes text authorizing the commission to issue temporary or emergency orders relating to the discharge of waste or pollutants when this is necessary to enable certain action. Deletes existing Subsections (b)-(g) regarding discharge of waste of pollutants.

SECTION 8. Amends Section 26.021(a), Water Code, to authorize the commission to authorize the chief administrative law judge of the State Office of Administrative Hearings to call and hold hearings on any subject on which the commission may hold a hearing. Deletes an exception.

SECTION 9. Amends Section 26.022(a), Water Code, to provide that, except as otherwise provided in Sections 5.401, 5.408, and 26.176 of this code, the provisions of this section apply to all hearings conducted in compliance with this chapter.

SECTION 10. Amends Section 26.354, Water Code, to authorize the commission to issue an emergency order to owners or operators of underground or aboveground storage tanks under Chapter 5K of this code, rather than providing that notwithstanding any other provisions of this chapter, the executive director may issue an emergency order to the person identified in Subsection (e) of this section under certain conditions. Deletes Subsections (b)-(e) regarding emergency orders issued under this section.

SECTION 11. Amends Section 361.274, Health and Safety Code, to require an emergency administrative order to be issued under Chapter 5K, Water Code.

SECTION 12. Amends Section 361.301, Health and Safety Code, to authorize the commission to issue an emergency mandatory or prohibitory order concerning an activity of solid waste management under its jurisdiction as provided by Chapter 5K, Water Code, even if the activity is not covered by a permit. Deletes provision regarding the determination by the commission that an emergency requiring immediate action to protect the public or environment exists. Deletes existing Subsections (b)-(d) regarding notice and hearing.

SECTION 13. Amends Section 366.016, Health and Safety Code, to authorize the commission or authorized agent to issue emergency orders under Chapter 5K of this code. Deletes existing Subsections (a)-(e) regarding an emergency and endangerment of public health because of the operation of an on-site sewage disposal system.

SECTION 14. Amends Section 382.026, Health and Safety Code, to authorize the commission to issue an order under an air emergency as provided by Chapter 5K, Water Code. Deletes existing Subsections (a)-(e) regarding air pollution and emissions.

SECTION 15. Amends Section 382.030(b), Health and Safety Code, to authorize the commission, except for hearings required to be held before the commission under Sections 5.401(e) and (f) and 5.412, Water Code, rather than Section 382.026, to authorize the executive director to take certain actions.

SECTION 16. Amends Section 382.031(e), Health and Safety Code, to provide that this section applies to all hearings held under this chapter except as otherwise specified by Section 382.017, rather than by Section 382.017, 382.026, or 382.063.

SECTION 17. Amends Section 382.063, Health and Safety Code, to authorize the commission to issue an emergency order because of catastrophe under Chapter 5K, Water Code. Deletes existing Subsections (a)-(j) regarding emergencies relating to air contaminants.

SECTION 18. Amends Section 401.506, Health and Safety Code, by adding Subsection (g), to authorize the commission to delegate its authority under this section to its executive direction by order or rule.

SECTION 19. Amends Section 401.270, Health and Safety Code, to delete existing Subsections (b)-(d) regarding the issuance of an emergency order to a person responsible for an activity, including a past activity, that threatens or may threaten public health and safety or the environment. Authorizes the commission to issue an emergency order under this section as provided by Chapter 5K, Water Code. Deletes existing Subsection (f) regarding an order issued by the commission pursuant to this section that is adopted without notice or hearing.

SECTION 20. Repealer: Sections 11.139, 11.148, and 13.4133 (Emergency Permits; Emergency Suspension of Permit Conditions; Emergency Rate Increase in Certain Circumstances), Water Code.

SECTION 21. Emergency clause.