

## **BILL ANALYSIS**

Senate Research Center  
82R25125 SLB-D

C.S.H.B. 2694  
By: Smith, Wayne (Huffman)  
Natural Resources  
5/3/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Commission on Environmental Quality (TCEQ) has regulatory oversight over air emissions, water use, wastewater discharges, and radioactive and solid waste disposal in Texas. The legislature created the umbrella structure for addressing environmental quality in 1993, consolidating regulatory programs of the Texas Natural Resource Conservation Commission (TNRCC). The legislature renamed TNRCC as TCEQ in 2001.

TCEQ is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. As a result of its review, the Sunset Advisory Commission found that Texas has a clear and ongoing need to regulate environmental quality, but TCEQ needs changes to be able to focus on and be effective in its core duties. This legislation continues TCEQ for 12 years and contains several additional statutory modifications. Among other provisions, the bill brings more predictability and authority to TCEQ's public assistance function; provides TCEQ additional tools to prevent and remediate groundwater contamination from leaking underground storage tanks and to effectively manage surface water; transfers the responsibility for making recommendations to protect groundwater for certain wells already under the jurisdiction of the Railroad Commission of Texas (railroad commission) from TCEQ to the railroad commission; and provides funding mechanisms to ensure TCEQ can meet its responsibilities.

In 1987, the legislature established the On-Site Wastewater Treatment Research Council (council) to award competitive research grants to improve the quality and affordability of on-site wastewater treatment systems and to educate the industry and public about on-site wastewater regulations and innovation. The council has a separate Sunset date of September 1, 2011. While the Sunset Advisory Commission found that the state continues to benefit from this research, it did not find a continuing need for an independent entity to administer the program. The Sunset Advisory Commission's recommendation to abolish the council and transfer its functions to TCEQ is also contained in this legislation.

C.S.H.B. 2694 amends current law relating to the continuation and functions of the Texas Commission on Environmental Quality and abolishing the On-site Wastewater Treatment Research Council

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Railroad Commission of Texas (railroad commission) in SECTION 2.01 (Section 91.011, Natural Resources Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is transferred to the railroad commission in SECTION 2.05 (Section 27.046, Water Code) of this bill.

Rulemaking authority is expressly granted to TCEQ in SECTION 3.04 (Section 5.276, Water Code) and SECTION 4.03 (Section 7.006, Water Code) of this bill.

Rulemaking authority previously granted to TCEQ is modified in SECTION 4.01 (Section 5.753, Water Code) and SECTION 4.02 (Section 5.754, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 4.07 (Section 26.3467, Water Code), SECTION 4.08 (Section 26.351, Water Code), SECTION 4.10 (Section 26.3574, Water Code), and SECTION 5.02 (Section 11.053, Water Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

### ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. Amends the heading to Chapter 5, Water Code, to read as follows:

#### CHAPTER 5. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SECTION 1.02. Amends Section 5.014, Water Code, as follows:

Sec. 5.014. SUNSET PROVISION. Provides that the Texas Commission on Environmental Quality (TCEQ), rather than the Texas Natural Resource Conservation Commission (TNRCC), is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that, unless continued in existence as provided by that chapter, TCEQ is abolished and this chapter expires September 1, 2023, rather than September 1, 2011.

SECTION 1.03. Amends Subchapter C, Chapter 5, Water Code, by adding Section 5.061, as follows:

Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN CONTRIBUTIONS. Prohibits a member of TCEQ from accepting a contribution to a campaign for election to an elected office. Provides that if a member of TCEQ accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. Requires that the vacancy be filled in the manner provided by law.

SECTION 1.04. Amends Subchapter D, Chapter 5, Water Code, by adding Section 5.1031, as follows:

Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TCEQ to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TCEQ rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TCEQ's jurisdiction.

(b) Requires that TCEQ's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires TCEQ to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

- (3) collect data concerning the effectiveness of those procedures.

SECTION 1.05. Amends Section 12.052(a), Water Code, as follows:

- (a) Requires TNRCC 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 dams located in this state. Requires TNRCC, in performing TNRCC's duties under this subsection, to identify and focus on the most hazardous dams in the state.

## ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

SECTION 2.01. Amends Section 91.011, Natural Resources Code, as follows:

Sec. 91.011. CASING. (a) Creates this subsection from existing text. Requires the owner or operator of a well being drilled for oil or gas, before drilling into the oil or gas bearing rock, to encase the well with good and sufficient wrought iron or steel casing or with any other material that meets standards adopted by the Railroad Commission of Texas (railroad commission), particularly where wells could be subjected to corrosive elements or high pressures and temperatures, in a manner and to a depth that will exclude surface or fresh water from the lower part of the well from penetrating the oil or gas bearing rock, and requires the well, if the well is drilled through the first into the lower oil or gas bearing rock, to be cased in a manner and to a depth that will exclude fresh water above the last oil or gas bearing rock penetrated.

- (b) Requires the railroad commission to adopt rules regarding the depth of well casings necessary to meet the requirements of this section.

SECTION 2.02. Amends Subchapter B, Chapter 91, Natural Resources Code, by adding Section 91.0115, as follows:

Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) Requires the railroad commission to issue, on request from an applicant for a permit for a well to be drilled into oil or gas bearing rock, a letter of determination stating the total depth of surface casing required for the well by Section 91.011.

- (b) Authorizes the railroad commission to charge a fee in an amount to be determined by the railroad commission for a letter of determination.

- (c) Requires the railroad commission to charge a fee not to exceed \$75, in addition to the fee required by Subsection (b), for processing a request to expedite a letter of determination. Authorizes money collected under this subsection to be used only to study and evaluate electronic access to geologic data and surface casing depths under Section 91.020.

SECTION 2.03. Amends Subchapter B, Chapter 91, Natural Resources Code, by adding Section 91.020, as follows:

Sec. 91.020. ELECTRONIC GEOLOGIC DATA. Requires the railroad commission to work cooperatively with other appropriate state agencies to study and evaluate electronic access to geologic data and surface casing depths necessary to protect usable groundwater in this state.

SECTION 2.04. Amends Section 27.033, Water Code, as follows:

Sec. 27.033. New heading: LETTER OF DETERMINATION. Requires a person making application to the railroad commission for a permit under this chapter to submit with the application a letter of determination from the railroad commission, rather than from the executive director of TCEQ (executive director), stating that drilling and using the disposal well and injecting oil and gas waste into the subsurface stratum will not

endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

SECTION 2.05. Amends Section 27.046, Water Code, as follows:

Sec. 27.046. New heading: LETTER OF DETERMINATION. (a) Prohibits the railroad commission from issuing a permit under rules adopted under this subchapter until the railroad commission issues to the applicant for the permit a letter of determination, rather than until the applicant provides to the railroad commission a letter from the executive director, stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

(b) Requires the railroad commission, rather than the executive director, to make the determination required by Subsection (a), to review:

- (1) the area of review and corrective action plans;
- (2) any subsurface monitoring plans required during injection or post injection;
- (3) any postinjection site care plans; and
- (4) any other elements of the application reasonably required in order for the railroad commission, rather than the executive director, to make the determination required by Subsection (a).

(c) Requires the railroad commission to adopt rules to implement and administer this section.

SECTION 2.06. Repealer: Section 5.701(r) (prohibiting the fee for processing a request for an expedited letter from the executive director stating the total depth of surface casing needed during the drilling of wells to protect usable ground waters in the state and required for the processing of certain permits from the railroad commission from exceeding \$75), Water Code.

SECTION 2.07. (a) Requires the railroad commission to adopt rules to implement the changes in law made by this article not later than March 1, 2012.

(b) Provides that a rule, form, policy, or procedure of TCEQ related to the changes in law made by this article continues in effect as a rule, form, policy, or procedure of the railroad commission and remains in effect until amended or replaced by that agency.

### ARTICLE 3. PUBLIC INTEREST

SECTION 3.01. Amends Subchapter F, Chapter 5, Water Code, by adding Section 5.239, as follows:

Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) Requires the executive director to ensure that TCEQ is responsive to environmental and citizens' concerns, including environmental quality and consumer protection.

(b) Requires the executive director to develop and implement a program to:

- (1) provide a centralized point for the public to access information about TCEQ and to learn about matters regulated by TCEQ;
- (2) identify and assess the concerns of the public in regard to matters regulated by TCEQ; and

- (3) respond to the concerns identified by the program.

SECTION 3.02. Amends Section 5.271, Water Code, as follows:

Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE OFFICE OF PUBLIC INTEREST COUNSEL. Provides that the office of public interest counsel (office) is created to ensure that TCEQ promotes the public's interest, rather than promotes the public's interest and is responsive to environmental and citizens' concerns including environmental quality and consumer protection. Provides that the primary duty of the office is to represent the public interest as a party to matters before TCEQ.

SECTION 3.03. Amends Subchapter G, Chapter 5, Water Code, by adding Section 5.2725, as follows:

Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) Requires the office to report to TCEQ each year in a public meeting held on a date determined by TCEQ to be timely for TCEQ to include the reported information in TCEQ's reports under Sections 5.178(a) (requiring TCEQ, on or before December 1 of each even-numbered year, to file with the governor and the members of the legislature a written report that includes a statement of the activities of TCEQ during the preceding fiscal biennium) and (b) (requiring that the report due by December 1 of an even-numbered year include certain information) and in TCEQ's biennial legislative appropriations requests as appropriate:

- (1) an evaluation of the office's performance in representing the public interest in the preceding year;
- (2) an assessment of the budget needs of the office, including the need to contract for outside expertise; and
- (3) any legislative or regulatory changes recommended under Section 5.273 (Duties of the Public Interest Counsel).

(b) Requires TCEQ and the office to work cooperatively to identify performance measures for the office.

SECTION 3.04. Amends Subchapter G, Chapter 5, Water Code, by adding Section 5.276, as follows:

Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION. (a) Requires TCEQ by rule, after consideration of recommendations from the office, to establish factors the public interest counsel must consider before the public interest counsel decides to represent the public interest as a party to a TCEQ proceeding.

(b) Requires that rules adopted under this section include:

- (1) factors to determine the nature and extent of the public interest; and
- (2) factors to consider in prioritizing the workload of the office.

#### ARTICLE 4. COMPLIANCE AND ENFORCEMENT

SECTION 4.01. Amends Section 5.753, Water Code, by amending Subsections (a) and (b) and adding Subsection (d-1), as follows:

(a) Requires TCEQ by rule, consistent with other law and the requirements necessary to maintain federal program authorization, to develop a method, rather than a uniform standard, for evaluating compliance history that ensures consistency in the evaluation. Authorizes TCEQ, in developing the method, to account for differences among regulated entities.

(b) Requires that the components of compliance history include:

- (1) except for orders described by Subsection (d-1)(2), enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government relating to compliance with applicable legal requirements under the jurisdiction of TCEQ or the United States Environmental Protection Agency;
- (2) notwithstanding any other provision of this code, orders issued under Section 7.070 (Findings of Fact Not Required; Reservations);
- (3) to the extent readily available to TCEQ, enforcement orders, court judgments, and criminal convictions relating to violations of environmental laws of other states; and
- (4) changes in ownership.

(d-1) Authorizes the components of compliance history to include:

- (1) information related to the complexity of the regulated entity, including:
  - (A) the complexity of the regulatory requirements applicable to the entity; and
  - (B) the severity of the consequences of noncompliance by the entity;
- (2) enforcement orders issued without penalties, shutdown orders, or other punitive sanctions; and
- (3) any other positive compliance factors related to the regulated entity.

SECTION 4.02. Amends Section 5.754(d), Water Code, as follows:

(d) Authorizes TCEQ by rule to require a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance, rather than requires TCEQ by rule to establish methods of assessing the compliance history of regulated entities for which it does not have adequate compliance information. Makes a nonsubstantive change.

SECTION 4.03. Amends Subchapter A, Chapter 7, Water Code, by adding Section 7.006, as follows:

Sec. 7.006. ENFORCEMENT POLICIES. (a) Requires TCEQ by rule to adopt a general enforcement policy that describes TCEQ's approach to enforcement.

(b) Requires TCEQ to assess, update, and publicly adopt specific enforcement policies regularly, including policies regarding the calculation of penalties.

(c) Requires TCEQ to make the policies available to the public, including by posting the policies on TCEQ's Internet website.

SECTION 4.04. Amends Sections 7.052(a) and (c), Water Code, as follows:

(a) Prohibits the amount of the penalty for a violation of Chapter 37 (Occupational Licensing and Registration) of this Code, Chapter 366 (On-Site Sewage Disposal Systems), 371 (Used Oil Collection, Management, and Recycling), or 372 (Environmental Performance Standards for Plumbing Fixtures), Health and Safety Code, or Chapter 1903 (Irrigators), Occupations Code, from being less than \$50 or greater than \$5,000, rather than from exceeding \$2,500, a day for each violation.

(c) Prohibits the amount of the penalty for all other violations within the jurisdiction of TCEQ to enforce from being less than \$50 or greater than \$25,000 a day, rather from exceeding \$10,000 a day, for each violation.

SECTION 4.05. Amends Section 7.067, Water Code, as follows:

Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) Authorizes TCEQ to compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. Authorizes TCEQ, in determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, to consider a respondent's willingness to contribute to supplemental environmental projects that are approved by TCEQ, giving preference to projects that benefit the community in which the alleged violation occurred. Authorizes TCEQ to encourage the cleanup of contaminated property through the use of supplemental environmental projects. Authorizes TCEQ to approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). Prohibits TCEQ, except as provided by Subsection (a-1), from approving a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency. Makes a nonsubstantive change.

(a-1) Authorizes TCEQ to approve a supplemental environmental project that is necessary to bring a respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation if the respondent is a local government.

(a-2) Requires TCEQ to develop a policy to prevent regulated entities from systematically avoiding compliance through the use of supplemental environmental projects under Subsection (a-1), including rules requiring an assessment of:

- (1) the entity's financial ability to pay administrative penalties;
- (2) the ability of the entity to remediate the harm or come into compliance; and
- (3) the need for corrective action.

(b) Defines, in this section, "local government." Makes a nonsubstantive change.

SECTION 4.06. Amends Section 13.4151(a), Water Code, as follows:

(a) Authorizes TCEQ, if a person, affiliated interest, or entity subject to the jurisdiction of TCEQ violates this chapter or a rule or order adopted under this chapter, to assess a penalty against that person, affiliated interest, or entity as provided by this section. Authorizes the penalty to be in an amount not less than \$100 or greater than \$5,000 a day, rather than authorizes the penalty to be in an amount not to exceed \$500 a day. Provides that each day a violation continues may be considered a separate violation.

SECTION 4.07. Amends Section 26.3467, Water Code, by adding Subsection (d), as follows:

(d) Prohibits a person from delivering any regulated substance into an underground storage tank regulated under this chapter unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346 (Registration Requirements). Authorizes TNRCC to impose an administrative penalty against a person who violates this subsection. Requires TNRCC to adopt rules as necessary to enforce this subsection.

SECTION 4.08. Amends Section 26.351, Water Code, by adding Subsections (c-1) and (c-2), as follows:

(c-1) Authorizes TNRCC to undertake corrective action to remove an underground or aboveground storage tank that:

- (1) is not in compliance with the requirements of this chapter;
- (2) is out of service;
- (3) presents a contamination risk; and
- (4) is owned or operated by a person who is financially unable to remediate the tank.

(c-2) Requires TNRCC to adopt rules to implement Subsection (c-1), including rules regarding:

- (1) the determination of the financial ability of the tank owner or operator to remediate the tank; and
- (2) the assessment of the potential risk of contamination from the site.

SECTION 4.09. Amends Section 26.3573(d), Water Code, as follows:

(d) Authorizes TNRCC to use the money in the petroleum storage tank remediation account to pay:

- (1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program;
- (2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by TNRCC or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter;
- (3) subject to the conditions of Subsection (f), expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility;
- (4) expenses associated with assuring compliance with TNRCC's applicable underground or aboveground storage tank administrative and technical requirements, including technical assistance and support, inspections, enforcement, and the provision of matching funds for grants; and
- (5) expenses associated with investigation, cleanup, or corrective action measures performed under Section 26.351(c-1).

Makes a nonsubstantive change.

SECTION 4.10. Amends Section 26.3574, Water Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that a fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Requires each operator of a



bulk facility on withdrawal from bulk of a petroleum product to collect from the person who orders the withdrawal a fee in an amount determined as follows:

- (1) not more than \$3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;
- (2) not more than \$7.50 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;
- (3) not more than \$11.75 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;
- (4) not more than \$15.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and
- (5) not more than \$7.50 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.

Deletes existing text relating to withdrawal from bulk of a petroleum product for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011.

(b-1) Requires TNRCC by rule to set the amount of the fee in Subsection (b) in an amount not to exceed the amount necessary to cover TNRCC's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose.

SECTION 4.11. (a) Requires TCEQ by rule, not later than September 1, 2012, to establish the method for evaluating compliance history as required by Section 5.753(a), Water Code, as amended by this article. Requires TCEQ, until TCEQ adopts that method, to continue in effect its current standard for evaluating compliance history.

(b) Provides that the changes in law made by Sections 7.052 and 13.4151, Water Code, as amended by this article, apply only to a violation that occurs on or after the effective date of this Act. Provides that, for purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date. Provides that a violation that occurs before the effective date of this Act is covered by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(c) Provides that the change in law made by Section 26.3467(d), Water Code, as added by this article, applies only to a delivery of a regulated substance to a petroleum storage tank made on or after the effective date of this Act.

## ARTICLE 5. WATER RIGHTS

SECTION 5.01. Amends Section 11.031, Water Code, by adding Subsections (d)-(f), as follows:

(d) Requires each person who has a water right issued by TNRCC or who impounds, diverts, or otherwise uses state water to maintain water use information on a monthly basis during the months a water rights holder uses permitted water. Requires the person to make the information available to TNRCC on the TNRCC's request.

(e) Authorizes TNRCC to request information maintained under Subsection (d) only during a drought or other emergency shortage of water.

(f) Provides that a person submitting a report under Subsection (a) (requiring each person who has a water right issued by TNRCC or who impounded, diverted, or otherwise used state water during the preceding calendar year, not later than March 1 of each year, to

submit a written report to TNRCC on a form prescribed by TNRCC) is not required to include information maintained under Subsection (d).

SECTION 5.02. Amends Subchapter B, Chapter 11, Water Code, by adding Section 11.053, as follows:

Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a) Authorizes the executive director of TNRCC by order, during a period of drought or other emergency shortage of water, to:

(1) temporarily suspend the right of any person who holds a water right to use the water; and

(2) adjust the allocation of water between water rights holders.

(b) Requires the executive director of TNRCC in ordering a suspension or an allocation adjustment under this section to ensure that an action taken:

(1) maximizes the beneficial use of water;

(2) minimizes the impact on water rights holders; and

(3) prevents the waste of water.

(c) Requires TNRCC to adopt rules to implement this section, including rules to determine the conditions under which the executive director of TNRCC may take action under this section.

SECTION 5.03. Amends Section 11.326, Water Code, by adding Subsections (g) and (h), as follows:

(g) Requires the executive director of TNRCC, for a water basin in which a watermaster is not appointed, to:

(1) evaluate the water basin at least once every five years to determine whether a watermaster should be appointed; and

(2) report the findings and make recommendations to TNRCC.

(h) Requires TNRCC to:

(1) determine the criteria or risk factors to be considered in an evaluation under Subsection (g); and

(2) include the findings and recommendations under Subsection (g) in TNRCC's biennial report to the legislature.

## ARTICLE 6. FUNDING

SECTION 6.01. Amends Section 401.246(a), Health and Safety Code, as follows:

(a) Requires that compact waste disposal fees adopted by TCEQ be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste

disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244 (Host County Public Projects);

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility;

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by TCEQ under law and TCEQ rules; and

(6) provide an amount necessary to support the activities of the Texas Low-Level Radioactive Waste Compact Commission.

SECTION 6.02. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Section 401.251, as follows:

Sec. 401.251. **LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION ACCOUNT.** (a) Provides that the low-level radioactive waste disposal compact commission account is an account in the general revenue fund.

(b) Requires TCEQ to deposit in the account the portion of the fee collected under Section 401.245 that is calculated to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006 of this code).

(c) Authorizes money in the account to be appropriated only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

SECTION 6.03. Amends Sections 5.701(n) and (p), Water Code, as follows:

(n)(1) Requires each provider of potable water or sewer utility service to collect a regulatory assessment from each retail customer as follows:

(A) Requires a public utility as defined in Section 13.002 (Definitions), rather than of this code, to collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) Requires a water supply or sewer service corporation as defined in Section 13.002, rather than of this code, to collect from each retail customer a regulatory assessment equal to one percent, rather than one-half of one percent, of the charge for retail water or sewer service.

(C) Requires a district as defined in Section 49.001, rather than of this code, that provides potable water or sewer utility service to retail customers to collect from each retail customer a regulatory assessment equal to one percent, rather than one-half of one percent, of the charge for retail water or sewer service.

(2) Provides that the regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) Authorizes the assessments collected under this subsection to be appropriated only to TCEQ or to the Public Utility Commission of Texas (PUC) solely to pay costs and expenses incurred by the agency in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13, rather than authorizes TCEQ to use the assessments collected under this subsection solely to pay costs and expenses incurred by TCEQ in the regulation of districts, water supply or sewer services corporations, and public utilities under Chapter 13, Water Code.

(p) Authorizes, notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes to be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsection (b) (providing that, except as otherwise provided by law, the fee for filing an application or petition is \$100 plus the cost of any required notice) to the extent those fees are paid by water districts, and Subsections (e) (requiring a person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion to pay a one-time nonrefundable application fee), (f) (requiring a person who files a bond issue application with TCEQ to pay an application fee set by TCEQ), and (n) (requiring each provider of potable water or sewer utility service to collect a regulatory assessment from each retail customer);

(2) Redesignates existing Subdivision (3) as Subdivision (2) and deletes existing text relating to fees under Sections 13.4521 (Filing Rate Change Request; Fee) and 13.4522 (Certificate of Public Convenience and Necessity; Sale, Transfer, or Merger; Application Fee). Section 54.037(c) (providing that the application fee for such a special petition is the same as for any ordinary district, and after the petition is filed, the standards and procedures for TCEQ review and action are the same as for any ordinary district, with certain exceptions); or

(3) Section 367.010 (Fees), Health and Safety Code.

SECTION 6.04. Repealer: Subchapter L (Commission Financing), Chapter 13, Water Code.

#### ARTICLE 7. WATER AND SEWER UTILITIES

SECTION 7.01. Amends Subchapter E, Chapter 13, Water Code, by adding Section 13.1325, as follows:

Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. Requires the state agency with jurisdiction over rates charged by water and sewer utilities to provide to a ratepayer, at a reasonable cost to the ratepayer, electronic copies of information provided to the agency under Sections 13.016 (Record of Proceedings; Right to Hearing), 13.043 (Appellate Jurisdiction), and 13.187 (Statement of Intent to Change Rates; Hearing; Determination of Rate Level), to the extent that the information is available and not confidential.

#### ARTICLE 8. ABOLITION OF THE ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

SECTION 8.01. Amends the heading to Chapter 367, Health and Safety Code, to read as follows:

#### CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH

SECTION 8.02. Amends Section 367.001, Health and Safety Code, as follows:

Sec. 367.001. DEFINITIONS. Redefines, in this chapter, "commission." Deletes existing definition of "council." Makes a nonsubstantive change.

SECTION 8.03. Amends Section 367.007, Health and Safety Code, as follows:

Sec. 367.007. ADMINISTRATION. (a) Redesignates existing Subsection (c) as Subsection (a). Authorizes TCEQ, rather than the On-Site Wastewater Treatment Research Council (council), to accept grants and donations from other sources to supplement the fees collected under Section 367.010. Requires that grants and donations be deposited to the credit of the water resource management account, rather than the on-site wastewater research account and authorizes that they be disbursed as TCEQ, rather than the council, directs and in accordance with Section 367.008.

(b) Redesignates existing Subsection (d) as Subsection (b). Provides that administrative and facilities support costs are payable from the water resources management account, rather than the one-site wastewater treatment research account.

Deletes existing Subsection (a) providing that the council is not an advisory body to TNRCC. Deletes existing text requiring TNRCC, at the direction of the council, to implement council decisions.

Deletes existing Subsection (b) authorizing the council to enter into an interagency contract with TNRCC to provide staff and other administrative support as required to improve the quality of wastewater treatment and reduce the cost of providing wastewater treatment to consumers.

Deletes existing Subsection (e) authorizing the council to award grants and enter into contracts in its own name and on its own behalf.

SECTION 8.04. Amends Section 367.008, Health and Safety Code, as follows:

Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) Requires TCEQ, rather than the council, to establish procedures for awarding grants and disbursing grant money.

(b) Authorizes TCEQ, rather than the council, to award competitive grants to:

(1) support applied research and demonstration projects by accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

(2) enhance technology transfer regarding on-site wastewater treatment by using educational courses, seminars, symposia, publications, and other forms of information dissemination.

(c) Requires TCEQ to seek the advice of relevant experts when choosing research topics, awarding grants, and holding educational conferences associated with activities under this chapter. Deletes existing text authorizing the council to award grants or make other expenditures authorized under this chapter only after the comptroller of public accounts certifies that the on-site wastewater treatment research account contains enough money to pay for those expenditures.

SECTION 8.05. Amends Section 367.009, Health and Safety Code, to require that money appropriated for the purposes of this chapter be disbursed as TCEQ, rather than the council, directs and in accordance with Section 367.008.

SECTION 8.06. Amends Section 367.010(d), Health and Safety Code, to require that fee proceeds be deposited to the credit of the water resources management account, rather than the on-site wastewater treatment research account.

SECTION 8.07. Repealer: Section 367.002 (Composition of Council), Health and Safety Code.

Repealer: Section 367.003 (Application of Sunset Act), Health and Safety Code.

Repealer: Section 367.004 (Terms), Health and Safety Code.

Repealer: Section 367.005 (Officers; Meetings), Health and Safety Code.

Repealer: Section 367.006 (Compensation; Expenses), Health and Safety Code.

Repealer: Section 367.011 (On-Site Wastewater Treatment Research Account), Health and Safety Code.

SECTION 8.08. (a) Requires TCEQ, on the effective date of this Act, to assume the administration of all grants of the council in existence on that date.

(b) Requires TCEQ to assume all contracts held by the council on the effective date of this Act, including all rights and obligations associated with the contracts.

#### ARTICLE 9. EFFECTIVE DATE

SECTION 9.01. Effective date: September 1, 2011.