2017 Legislative Session Update
Public Utility Law Section
State Bar of Texas

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New Laws

Water Utilities

H.B. 294 – Revocation of Water Utility CCNs

Relating to the revocation of certain water utilities certificate of public convenience and necessity for major rules violations

- The law provides an additional mechanism to address water quality issues for water utilities.
- The bill amends the Water Code to require the OAG to bring a suit for appointment of a receiver upon the request of the PUC or TCEQ in the event that a water utility violates a final judgment issued by a district court in a suit brought by the OAG related to service quality.
- The bill was mainly aimed at addressing issues with Suburban Utilities, but will apply to any similar situation that occurs in the future. This bill provides the authority for the OAG to seek the appointment of a receiver for such utilities.
- This bill becomes effective on September 1, 2017.
- PUC Project No. 47304 - Amendments to 16 TAC §24.142(a) for Appointment of Receiver for Water or Sewer Utility Pursuant to Texas Water Code §13.412(a)

H.B. 1083 – Water Rates for Elderly

Relating to authorizing a regulatory authority to establish reduced water utility rates funded by donations for the benefit of elderly customers

- The bill allows the PUC to set water rates for customers 65 years or older at a reduced rate.
- The bill also requires the PUC to allow a water utility to establish a fund to receive voluntary donations to recover the costs of the reduced rates.
- The bill prohibits the utility from recovering the costs for the program for the elderly from other ratepayers.
- The bill becomes effective on September 1, 2017.
- PUC Project No. 47303 - Amendments to 16 TAC §24.21 to Allow a Utility to Establish Reduced Water Utility Rates Funded by Donations for Elderly Customers Pursuant to Texas Water Code §§13.182 and 13.189

H.B. 2369 – Water Rates for School Districts

Relating to municipal rates for water and sewer service charged to public school districts

- The bill prohibits a municipally-owned water utility from charging a fee to a school district based on the number of district students or employees.
- The bill gives the right to a school district to appeal such a fee to the PUC.
- The administrative hearing at the PUC shall be de novo, and the utility has the burden of proof.
- The PUC shall set the appropriate fee to be charge the school district.
- The provisions only apply to fees charged for water or sewer service to a public school district.
- The bill became effective on June 15, 2017.
- PUC Project No. 47305 - Amendments to 16 TAC §24.45 Relating to Municipal Fees Charged to Public School Districts for Water or Sewer Service Pursuant to Texas Water Code §§13.044, 13.041 and 13.088

S.B. 873 – Complaints for Master-Metered Water

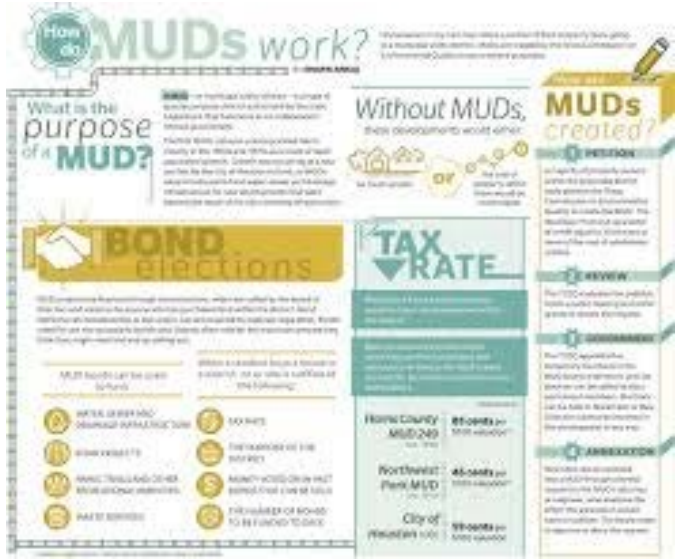
Relating to the authority and liability of owners and managers of apartment houses, manufactured home rental communities, condominiums, and multiple use facilities in charging tenants

- The bill provides that the PUC has exclusive jurisdiction over disputes related to billing for sub-metered water at apartment complexes and condominium projects.
- Currently, the PUC has exclusive jurisdiction to determine disputes between tenants and apartment complexes and condominium projects that sub-meter electric usage to its residents. However, the PUC does not have such authority over water service. Therefore, cases are being brought in district court against owners of apartment and condominium projects related to sub-metered water charges that are authorized by the PUC.
- The bill requires that in the event the PUC determines the tenant has been overcharged, then the PUC shall require the owner of the property to repay the overcharge to the tenant. It also allows the PUC to assess an administrative penalty against the owner of the property for violations of the sub-metering rules.
- The bill became effective on June 1, 2017.
- PUC Project No. 47302 - Amendments to 16 TAC §§24.121, 24.123, and 24.126 and Addition of a New Section to Implement Legislation Regarding Submetering and Allocated Water and Sewer Utility Services, Complaints Process and Restitution Pursuant to Texas Water Code §§13.501, 13.503, 13.5031 and 13.505

S.B. 1842 – Water Utilities and MUDs

Relating to an application for the amendment of a certificate of public convenience and necessity in an area within the boundaries of a political subdivision

- The bill allows a Class A water utility to apply to amend its certificate of convenience and necessity for dual certification with a municipal utility district (MUD).
- The water utility would have the same rights and powers as the MUD.
- The water utility must provide specific information in its CCN amendment application.
- The utility must have the written consent of the MUD and a contract with the MUD.
- If the application to the PUC meets all of the statutory requirements, then the PUC must approve the application.
- The bill becomes effective on September 1, 2017.



Electric Utilities

H.B. 931 – Hike and Bike Trails

Relating to liability of certain electric utilities that allow certain uses of land that the electric utility owns, occupies, or leases

- The bill limits liability for an electric utility that enters into an agreement with a person to use its premises for recreational use.
- The law allows an electric utility to enter into a written agreement with a political subdivision for the land owned by an electric utility to be used for recreational purposes.
- The utility's liability in civil lawsuits for injuries sustained on the property are limited except for willful or gross negligence.
- The law is currently bracketed to Harris County; HB 931would remove the bracket.
- The bill becomes effective on September 1, 2017.

S.B. 277 – Wind Farm Tax Incentives

Relating to the eligibility of certain property for certain ad valorem tax incentives relating to wind-powered energy devices

- The bill prohibits the use of ad valorem tax incentives for wind-powered energy devices within 25 miles of a military aviation facility.
- There are grandfathering clauses for projects that have entered into an Abatement Act agreement prior to September 1, 2017.
- It also exempts projects that are expansions or repowering of an existing project.
- The bill becomes effective on September 1, 2017.

S.B. 735 – Electric Rate Regulation Reforms

Relating to periodic rate adjustment by electric utilities

- The bill provides regulatory reforms at the PUC that are applicable to electric utilities.
- Currently, an electric utility controls when it files a rate proceeding or the PUC can review rates on its own motion if the rates are deemed unreasonable. The bill requires the PUC to establish a schedule for ERCOT electric utilities to make periodic rate filings. It sets forth the factors to determine the schedule and provides "off-ramps" to delay a periodic rate filing, if a delay is justified. The purpose of the provision is to ensure that electric utilities have rate proceedings on a more consistent basis to better ensure the rates are just and reasonable.
- Currently, an electric utility is only allowed to use a periodic rate adjustment four times between base rate proceedings. If an electric utility is subject to the periodic rate reviews discussed above, then the bill allows the utility to utilize a periodic rate adjustment more than four times between rate proceedings.
- Currently, the PUC has 180 days to issue an order in a sale, transfer, and merger proceeding. The bill provides the ability for the PUC to extend the deadline in such cases for an additional 60 days. The PUC can extend the deadline to evaluate additional information, to consider actions taken by other jurisdictions concerning the transaction, to provide for administrative efficiency, or for good cause.
- The bill repeals the requirements for a study to be performed on periodic rate adjustments and for a study that has already been performed related to periodic rates as well as repealing the expiration date for the statute that allows electric utilities to make periodic rate adjustments.
- The bill became effective on May 27, 2017.

S.B. 736 – GLO Retail Electric Power

Relating to the authority of the General Land Office to sell retail electric power

- In 1999 with electric deregulation, the legislature provided statutory authority to the General Land Office (GLO) for the State Energy Marketing Program (SEMP). It allows GLO to sell natural gas and electricity competitively to public entities, such as schools, municipalities, and other state agencies.
- S.B. 736 as filed eliminated GLO's ability to sell power and essentially abolished the SEMP program.
- However, the bill was amended to require the GLO to conduct a study that is due on September 1, 2018, on the sale of electric power by GLO.
- The study will provide data on how many entities buy power from GLO, what the aggregate rates and contract terms are, and what fiscal impact the SEMP has on state resources.
- This bill becomes effective on September 1, 2017.

S.B. 758 – Municipal Bill Assistance Programs

Relating to bill payment assistance programs offered by certain municipalities

- Currently, low income customers served by the municipal water and electric utilities of the city of San Antonio must be threatened with disconnection in order to receive payment assistance.
- The bill removes the requirement for a low income customer served by the municipal water and electric utilities of the city of San Antonio to have been threatened with disconnection in order to receive funds through the bill payment assistance program.
- This bill becomes effective on September 1, 2017.

S.B. 1002 – Electric Utility Pensions

Relating to accounting principles applicable to pension and other postemployment benefit expenses for electric utilities

- The bill modifies the Public Utility Regulatory Act (PURA) to address issues related to the recovery of costs by electric utilities for pensions and other postemployment benefits.
- The Financial Accounting Standards Board (FASB) plans to make modifications to generally accepted accounting principles (GAAP) that would negatively impact the recovery of reserve accounts for pension and other postemployment benefits by electric utilities.
- The result of the proposed FASB change is that only one component of the benefit accounts will be recorded as an “operating expense” and the remaining components will be recorded as “non-operating expense.”
- Currently, PURA only allows “operating” expenses related to such benefits as recoverable in rates. The bill removes the word "operating" related to the expense for reserve accounts for pension and other postemployment benefits, so that the newly-designated “non-operating expenses” can continue to be included in rates.
- This bill would correct the unintended consequences of the FASB ruling.
- There are no additional costs to ratepayers due to this change.
- The bill became effective on May 22, 2017.

S.B. 1145 – Entergy Advanced Meters

Relating to the deployment of advanced metering and meter information networks in certain non-ERCOT areas

- The bill allows Entergy to deploy advanced meters in its service territory.
- The bill provides for the recovery of reasonable and necessary costs for Entergy to deploy advanced meters in its service territory.
- It also provides for customer protections related to the deployment of such meters.
- The bill became effective on May 22, 2017.

S.B. 1976 – Identifying Low-Income Customers

Relating to the eligibility process for customer service benefits

- When the System Benefit Fund expires in August of 2017, retail electric providers (REPs) and telecommunication providers will no longer have a method to determine the ratepayers that qualify for bill assistance programs. The bill provides a mechanism for those entities to receive such information.
- The bill requires Health and Human Servicers Commission (HHSC), at the request of the PUC, to assist in developing an automatic process to provide identification of low-income customers to electric and telecommunication companies in order to provide bill assistance programs.
- The PUC may not require a utility to offer discounts without reimbursement.
- Each REP must submit a request to the PUC for the information. Those REPs that request the information will be responsible for the costs to HHSC and the PUC to provide the data.
- This bill becomes effective on September 1, 2017.

Low-Level Radioactive Waste

H.B. 2662 – Low-Level Radioactive Waste

Relating to the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility

- The bill reduces two fees that are paid to the State for waste disposed at the site for the next biennium.
- For contracts to accept non-compact waste, an additional surcharge fee of 20% as well as other fees are added to the contracted fee amount. The 20% fee is credited to a general revenue dedicated account that is for the environmental radiation and perpetual care account. The bill reduces the dedicated account fee for non-compact waste from 20% to 10%.
- In addition, the bill also repeals the 5% fee paid to General Revenue for compact and federal waste.
- The bill reinstates both fee payments effective September 1, 2019.
- The bill also requires the TCEQ to perform a study on capacity once every four years. Currently, there was a one-time report by TCEQ.
- It requires generators of low-level radioactive waste to provide information annually to TCEQ.
- Lastly, the bill creates an oversight committee to assess the operations and fees of the compact facility. The committee's study must be submitted by December 1, 2018.
- The bill became effective on June 15, 2017.

S.B. 1330 – Low-Level Radioactive Waste Funding

Relating to funding for the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission

- Currently, there is a 5% fee to any compact and federal waste that enters the Andrews County site for disposal of low-level radioactive waste. It is deposited into General Revenue.
- This bill moves the 5% fee from General Revenue and requires that it to be deposited into the dedicated fund.
- This bill becomes meaningless in the near-term, because H.B. 2662 repealed the 5% fee that is deposited into General Revenue. However, the current bill would reinstate the fee in 2019.
- This bill becomes effective on September 1, 2017.

S.B. 1667 – Low-Level Radioactive Waste Functions

Relating to the functions of the Texas Low Level Radioactive Waste Compact Commission

- Due to the unique status of the Texas Low Level Radioactive Waste Compact Commission, the Commission has regularly had difficulties with the LBB and Comptroller related to its operations and budget. This bill would provide clarity on such issues.
- Although the Commission is not a state agency, it is appropriated funds through the legislative process. The funds are dedicated funds to the Commission through a fee mechanism for waste that enters the site and through a $25 million payment from Vermont.
- Because it is appropriated funds, the LBB and Comptroller have required the Commission to comply with certain State-required measures that the Commission claims are contrary to the provisions of the federal statute creating the Commission.
- This bill is intended to clarify that the Commission cannot be required to perform certain functions required by the LBB and Comptroller because it is appropriated such funds.
- This bill becomes effective on September 1, 2017.

Telecommunications

S.B. 586 – USF for Small and Rural ILECs

Relating to the distribution of universal service funds to certain small and rural incumbent local exchange companies

- In 2011, small ILECS elected to receive support in fixed monthly support amounts that increase annually based on the annual change in the Consumer Price Index (CPI). The support amounts established in 2011 expire on September 1, 2017, after which small ILECs will receive support on a per-line basis and without annual increases based on the annual change in the CPI.
- The bill allows small ILECs to elect to receive support based on a new methodology. The new mechanism would provide support for small ILECs by comparing a small ILEC's annual financial reports to a range of rates-of-return on invested capital that are to be deemed reasonable.
  - For 2018, the deemed-reasonable rates-of-return will range from 7.5% to 12.5%. The support may not be adjusted if the small ILEC is earning a return within this range.
  - For small ILECs earning a return above or below this range, the bill establishes procedures for the PUC to adjust these small ILECs' USF support so that the small ILECs will earn a rate-of-return within the deemed-reasonable range.
- For small ILECs electing into the new methodology, the bill also extends the expiration of the fixed monthly support amounts previously authorized until the Commission enters a determination or adjustment regarding the small ILEC's support amounts.
- For small ILECs that do not elect into the new methodology, the support amounts authorized previously will expire 61 days after the adoption of a rule to implement this bill. These small ILECs will return to the monthly per-line support amounts previously authorized, which can be adjusted.
- This bill becomes effective on September 1, 2017.

S.B. 1476 – USF for Certain Competitors

Relating to the elimination of certain charges and programs associated with the universal service fund

- In 2013, the legislature passed S.B. 583 that had been negotiated with the various telecommunication carriers and the PUC related to receiving funds from the TUSF. It created a phase out of the support telecommunication providers receive from the TUSF in certain exchanges.
- It allowed competitive providers to continue receiving TUSF support for 24 months after deregulation by the incumbent provider. AT&T deregulated earlier than anticipated, and the support to the smaller providers would have ended in the fall of 2016 under the then-current law. In 2015, S.B. 804 extended the 24 month deadline for the support until 12-31-17.
- This bill removes the deadline for termination of the TUSF to certain telecommunication providers and replaces it with a determination by the PUC that support should be eliminated. The support will expire on 12-31-23 if the PUC has not previously eliminated the support.
- The bill becomes effective on September 1, 2017.

S.B. 1003 – AT&T Lifeline Program Removal

Relating to the participation of deregulated telecommunications companies in the lifeline program

- Currently, the lifeline program funds are reimbursed to AT&T through the universal service fund.
- The lifeline program is designed to help qualified low-income individuals pay the monthly cost of basic telephone service. Telecommunications service has traditionally been regarded as an essential service and the lifeline program was created to help maintain the affordability of the service to encourage and enable citizens to have access to it.
- There are state and federal lifeline programs. A resident is qualified for the program if the current total household income is at or below 150 percent of the federal poverty guidelines. A resident is also qualified if they receive current benefits, such as Medicaid. Lifeline reduces the basic monthly telephone rate up to $12.75 for those who qualify.
- The bill provides that deregulated telecommunications providers would no longer be required to offer the lifeline discount to eligible low-income customers, and the Public Utility Commission would no longer have jurisdiction or authority to enforce the lifeline program requirements on the deregulated telecommunications providers.
- The bill became effective on May 18, 2017.

S.B. 1004 – 5G Technology

Relating to the deployment of network nodes in public rights-of-way

- Currently, there are various companies in Texas attempting to deploy small cell devices in order to implement 5G technology to enhance internet capabilities.
- This bill establishes a statutory, statewide framework to encourage the deployment of the new technology.
- It provides very specific requirements for the municipalities and the telecommunication providers.
  - Municipalities may not charge an annual rate to use the right-of-way (ROW) that exceeds $250 per the number of network nodes installed.
  - Municipalities may charge a fee of $20 per year per service pole to collocate facilities.
  - Municipalities are prohibited from charging any additional compensation for the rights to use the ROW or poles.
  - Municipalities have a right to require an agreement for collocation as long as it does not conflict with the statute.
  - It provides specific size and location requirements as to the installation of the poles and equipment by the providers as well as allowing the municipalities to develop design manuals.
  - There are protections for installation of equipment in municipal parks, residential areas, and historic or design areas.
  - It establishes the costs allowed for permits and the time frames that must be met to issue a permit.
  - It requires a provider to begin construction under the permit within six months.
  - It addresses the requirement for municipally-owned electric utilities to provide access to their facilities utilizing negotiated attachment agreements.
  - It exempts investor-owned electric utilities, electric cooperatives, telephone cooperatives, and telecommunication providers from the chapter.
- The bill becomes effective on September 1, 2017.

Oil and Gas

H.B. 1818 – Railroad Commission Sunset

Relating to the continuation and functions of the Railroad Commission of Texas

- The bill continues the Railroad Commission for 12 years.
- The following changes are made to agency operations:
  - Requires the Commission to develop a policy to encourage the use of alternative dispute resolution to assist in the resolution of internal and external disputes under the Commission's jurisdiction
  - Requires the Oil and Gas Division to develop and publish an annual strategic plan regarding oil and gas monitoring and enforcement activities and post the plan on the Commission website
  - Creates new pipeline safety and regulatory fees for permits or registrations for pipelines and specifies that the collected fees will be deposited to the credit of the Oil and Gas Regulation and Cleanup Fund
  - Requires anyone contracting with the Commission to use E-Verify
  - Authorizes the agency to enforce damage prevention requirements for interstate pipelines and facilities
  - Repeals the Alternative Fuels Program and the Oil and Gas Regulation and Cleanup Fund Advisory Committee.
- This is the third session out of the last four that the Railroad Commission has had a sunset bill.
- The bill becomes effective on September 1, 2017.

H.B. 2277 – Taxes on Gas Wells

Relating to fixing the median cost of high-cost gas wells

- The bill clarifies the procedure by which the Comptroller calculates high-cost natural gas severance tax reductions for eligible natural gas wells and repeals other outdated provisions of the Tax Code related to the high-cost natural gas severance tax reduction.
- There is a 7.5 percent severance tax on natural gas production. However, the Tax Code offers the availability of a reduced rate for “high-cost” natural gas wells. These wells are defined in several ways, the most common of which are wells producing gas located at a depth of more than 15,000 feet or produced from designated “tight” formations. The Railroad Commission must certify a well as high-cost in order for it to be eligible for the tax reduction.
- The Comptroller calculates the reduced tax rate using a formula based on each well’s associated drilling and completion (D&C) costs and the median D&C costs for all high-cost wells in the previous fiscal year. Amended reports are sometimes filed after the close of the previous tax year and when this happens it can change the previous year’s median D&C costs after that number has already been established.
- The bill clarifies that the Comptroller’s determination of the median D&C costs from the previous year is final on the date of determination. The bill also establishes a March 1 deadline for submitting D&C costs to the Comptroller for individual wells and does not allow for an amendment after that date. Finally, the bill clarifies that if a refund is owed, the refund shall be paid to the taxpayer who remitted the payment.
- The bill becomes effective on September 1, 2017.

H.B. 2588 – Employee Criminal History

Relating to access to criminal history record information by the Railroad Commission of Texas

- The bill allows the Railroad Commission to obtain criminal history record information for individuals who are applying for jobs or for contracts with the agency.
- State agencies are required to obtain statutory authorization under Chapter 411, Government Code, in order to access criminal history record information maintained by DPS. Under Chapter 411, at least 30 state agencies currently have authority to access this information.
- The bill does not prohibit the Railroad Commission from hiring an applicant with a criminal history.
- The agency may not release the information except by court order or with the consent of the person who is the subject of the information and must destroy the information after 180 days.
- The bill became effective on June 9, 2017.

S.B. 1871 – Theft of Oil and Gas Equipment

Relating to the creation of the offense of petroleum product or oil and gas equipment theft

- The bill creates the offense of theft of a petroleum product in the Penal Code.
- Theft of oil and gas is a problem in the heavy oil producing regions of Texas, such as the Permian Basin and Eagle Ford Shale areas. A specific oil and gas theft statute provides prosecutors with a better tool to address these crimes.
- Last session, a bill was passed to address oil field theft; however, it was vetoed due to overly-broad language that made simple paperwork and permitting errors potential felonies. This bill addressed the problems identified in last session's veto statement.
- It requires someone to unlawfully appropriate a petroleum product with intent to deprive the owner and without the owner's effective consent.
- It creates harsh penalties, which escalate depending on the value of petroleum product stolen.
- The bill becomes effective on September 1, 2017.

Environmental

H.B. 2533 – Notice of Lawsuits

Relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality

- In the past, local governments have filed lawsuits that have prevented TCEQ from pursuing independent enforcement, because TCEQ becomes a necessary and indispensable party to the local government's suit pursuant to statute.
- The current statute prohibits the TCEQ from assessing an administrative penalty for violations in a civil suit brought by a local government entity, if that entity is diligently prosecuting the lawsuit.
- Examples are the suits filed by Harris County and Fort Bend County against Volkswagen.
- The bill required local governments to provide written notice to TCEQ and the Attorney General before filing a suit that seeks a civil penalty. Written notice is not required if the suit seeks injunctive relief only.
- A local government may institute a civil suit on or after the 90th day notice is received, unless the Attorney General has commenced a suit concerning at least one of the violations, or TCEQ or the Attorney General denies authorization to pursue the suit.
- The bill becomes effective on September 1, 2017.

H.B. 3177 – Uncontested Permits

Relating to the delegation of uncontested matters to the executive director of the Texas Commission on Environmental Quality

- Currently, at TCEQ, there is no clear process for addressing when protestants conditionally withdraw their respective requests, or otherwise settle with the applicant, prior to being named as parties.
- The bill addresses this situation and streamlines the issuance of permits by allowing the Executive Director of TCEQ to act on an application or request if the matter is uncontested.
- Each person who requested a contested case hearing must have withdrawn the request or agreed in writing to the action to be taken by the Executive Director.
- The bill also provides for judicial review of the executive director's decision on an uncontested matter.
- The changes result in reduced costs and resources for both the regulated community and TCEQ.
- The bill becomes effective on September 1, 2017.

S.B. 1105 – Water Resources Management Acct

Relating to the abolishment of the used oil recycling account, deposits of used oil recycling fees, and use of the water resource management account

- The Water Resources Management Account provides most of the funds for TCEQ's water programs.
- In recent years, the account balance has been depleted due to expenditures exceeding revenues. This trend is expected to continue absent a fee increase or an appropriations reduction for TCEQ water programs.
- Currently, the balance of the Used Oil Recycling Account Fund is approximately $18 million.
- The bill eliminated the Used Oil Recycling Account and transferred any remaining funds and future deposits to the Water Resources Management Account.
- The purpose of the automotive oil sale fee would continue to support existing used oil programs.
- The bill becomes effective on September 1, 2017.

H.B. 2771 – Wastewater Treatment Permits

Relating to the wastewater treatment permit application

- The bill continues the collection of a $10 fee from on-site sewage facilities by TCEQ and requires that the money collected from that be used to fund grants for wastewater treatment research.
- The grants can be given to accredited colleges and universities, governmental entities, and acceptable public and private research centers.
- The fee was originally collected to fund the Texas Onsite Wastewater Treatment Council, which was abolished by the TCEQ Sunset Bill of the 82nd Session. This bill will allow TCEQ to continue collecting the fee and directing the revenue to the Water Resource Management Account and the research grants will continue to be funded from there.
- The bill becomes effective on September 1, 2017.

H.B. 3618 – Water Quality Permits

Relating to water quality permitting

- The bill repeals a provision that requires all wastewater permits in a single watershed expire on the same date, thereby requiring TCEQ to simultaneously review and renew such permits.
- It also ratifies the process by creating an individual expiration date for wastewater permits within their own watershed every five years from the date of issuance.
- The changes result in reduced costs and resources for both the regulated community and TCEQ.
- The bill becomes effective on September 1, 2017.

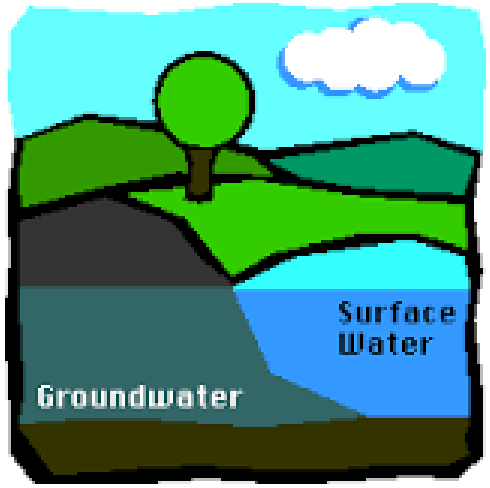
H.B. 3735 – Water Right Applications

Relating to an application for a new or amended water right submitted to the Texas Commission on Environmental Quality

- Certain provisions related to the review of water rights applications at TCEQ were obsolete and in need of changes.
- The bill repealed overly-prescriptive provisions related to the map required to accompany an application for a new or amended water right.
- The bill also limits the factors TCEQ may consider in determining whether an appropriation is detrimental to the public welfare to factors "within the jurisdiction and expertise of TCEQ."
- The bill required TCEQ to expedite the consideration of certain amendments to an existing water right permit to divert seawater for desalination if the water right holder has begun diverting under the permit and the amendment meets certain requirements.
- The bill becomes effective on September 1, 2017.

S.B. 864 – Surface Water Permits

Relating to the procedure for obtaining a right to use state water if the applicant proposes an alternative source of water that is not state water



- A water right permit may authorize the use of an alternative source – including groundwater - in lieu of state water.
- For applications involving groundwater from wells in a groundwater conservation district, TCEQ practice has been to require the applicant to provide a groundwater permit or proof that no permit is required.
- Statute and Commission rules do not require notice to groundwater conservation districts for these applications. However, any person may request to be placed on an interested persons list and receive notices for applications within a county or basin.
- The bill required that notice be provided to a groundwater conservation district with jurisdiction over the groundwater whenever a surface water permit at TCEQ proposes to use groundwater as an alternate source.
- TCEQ already has a procedure for providing notice during the permitting process, so the bill simply expands the notice requirements to apply to groundwater conservation districts.
- The bill becomes effective on September 1, 2017.

S.B. 1430 – Expedited Water Permits

Relating to desalinated seawater and a requirement that the Texas Commission on Environmental Quality provide expedited consideration of certain applications to amend water rights

- The bill required TCEQ to expedite the consideration of certain amendments to an existing water right permits to divert seawater for desalination if the water right holder has begun diverting under the permit and the amendment meets certain requirements.
- Last session, legislation was passed that created an expedited permitting process for certain diversions of marine seawater and seawater and the discharge of the resultant waste from the desalination process. This bill makes further clarification to insure that the permit amendment will not authorize a greater combined rate of diversion than existing surface water rights allow.
- The Executive Director of TCEQ will prioritize the technical review of the applications over the technical review of other applications.
- An administrative law judge would be required to complete a contested proceeding and provide a decision proposal to TCEQ not later than the 270 days after the date of referral
- The bill becomes effective on September 1, 2017.

H.B. 4181 – Air Quality Permit Notices

Relating to the electronic transmission of certain notice required for air quality permits

- The bill allows TCEQ to use a new option of sending renewal notices to the permit holder in an electronic communication format.
- It also allows the division to use electronic communications to send federal operating permit proposed final actions to the applicant and participants.
- The program must have a reliable means of verifying receipt of the notice.
- This provision will result in lower costs and added efficiencies.
- TCEQ procedures will need to be revised to ensure e-mail addresses are provided, so electronic communication can be provided.
- The bill becomes effective on September 1, 2017.

S.B. 1045 – Air Quality Permits

Relating to the consolidation of public notice requirements for certain air quality permit applications

- Under current law, an applicant for an air permit is required to publish a Notice of Receipt of Application and Intent to Obtain Permit within 30 days after its permit application is determined by the Texas Commission on Environmental Quality (TCEQ) to be administratively complete.
- Publication of the Notice of Receipt of Application and Intent to Obtain Permit opens a public comment period that must last at least 30 days.
- After the permit is determined by TCEQ to be technically complete, the applicant must publish the Notice of Application and Preliminary Decision within 30 days.
- The bill allows an air permit applicant to consolidate the Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision into a single notice in cases where the TCEQ determines that the application is administratively complete and finishes preparing the draft permit within fifteen days of receiving the application.
- In practice, the bill will shorten the application period for minor, routinely-issued permits.
- The bill does not alter the 30-day comment period required by the EPA.
- The bill becomes effective on September 1, 2017.

General Issues

H.B. 1290 – Rulemaking Repeal Requirements

Relating to the required repeal of a state agency rule before adoption of a new state agency rule

- The bill requires a state agency to repeal or amend rules to reduce costs on regulated persons prior to adopting a rule to increase costs on that person.
- A state agency cannot adopt a new rule to increase costs to a regulated person without first either repealing or amending, or a combination thereof, a rule to reduce costs on the regulated person in the same amount.
- The provisions do not apply to rules related to the following: agency procurement, reduction in burdens or costs, natural disasters, necessary for federal funds or compliance, protection of water resources, protection of health, safety, and welfare of residents, adopted by DPFS, DMV, PUC, TCEQ, or TRC, adopted by a SDSI agency, or necessary to implement legislation.
- Any proposed rule must comply with the publication requirements of the Texas Register.
- The bill also requires state agencies to prepare a government growth impact statement on all proposed rules. The agency must address eight factors for the first five years that the rule will be in effect. It also requires the Comptroller to adopt a rule to implement the requirement.
- The bill becomes effective on September 1, 2017.

H.B. 3433 – Rulemaking Impacts to Rural Areas

Relating to the adoption by state agencies of rules affecting rural communities

- Currently, state agencies are required to consider the impact of proposed rules to small businesses or micro-businesses.
- This bill requires state agencies to also consider the impact of a rule on rural communities, which is defined as municipalities with less than a 25,000 population.
- It also requires the state agency to provide notice, if feasible, to members of the legislature who represent a rural community that could be adversely impacted by the proposed rule.
- The bill becomes effective on September 1, 2017.

S.B. 564 – Open Meetings Act – Security

Relating to the applicability of open meetings requirements to certain meetings of a governing body relating to information technology security practices

- The bill exempts deliberations of a governmental body from the open meetings requirements in order to discuss security assessments or deployments related to information resource technology, network security information, or deployment of security personnel, critical infrastructure, or security devices.
- It also expands the applicability of confidentiality to network security information beyond state agencies to include governmental entities.
- The bill becomes effective on September 1, 2017.

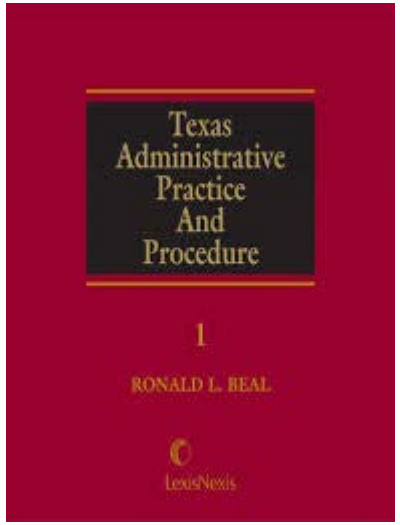
S.B. 528 – Chief Administrative Law Judge

Relating to the term of chief administrative law judge

- The current statute does not provide the dates for the term of the chief administrative law judge at the State Office of Administrative Hearings (SOAH).
- The bill establishes the term of the chief administrative law judge at SOAH to expire on May 15 of each even-numbered year in order to provide more clarity to the statute.
- The bill becomes effective on September 1, 2017.

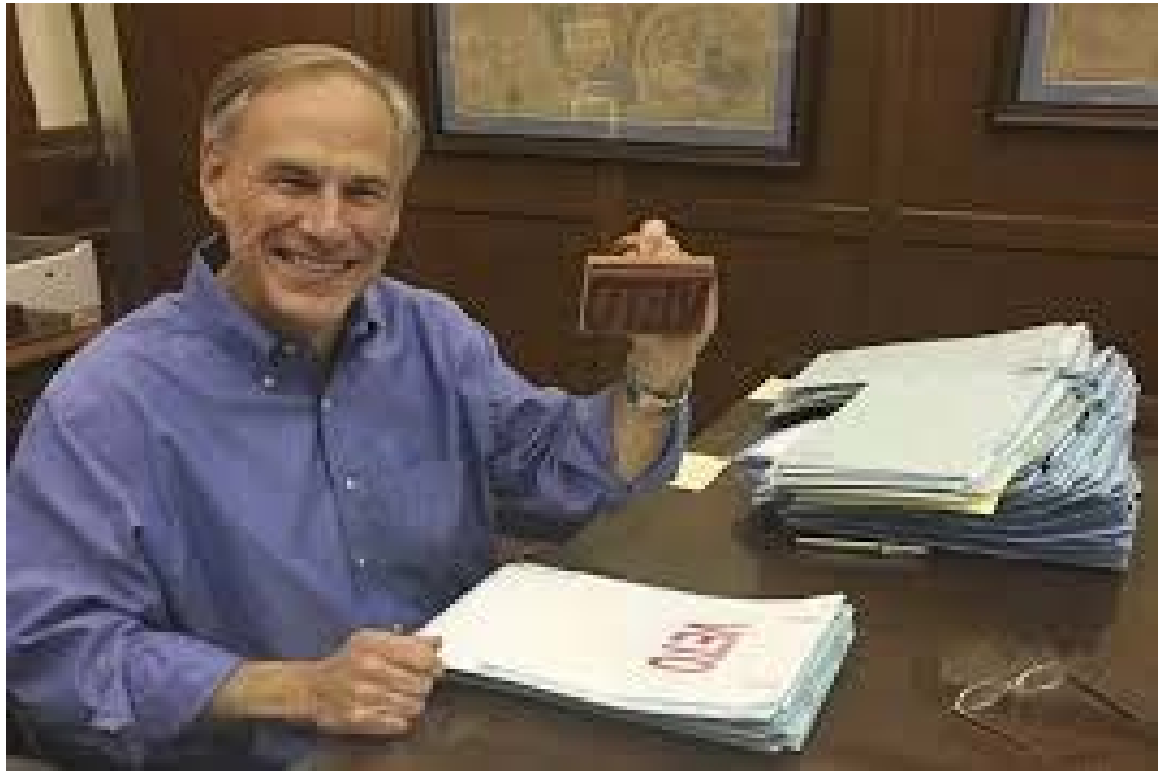
S.B. 1446 – APA

Relating to contested cases conducted under the Administrative Procedures Act



- S.B. 1267 was passed in the last legislative session. There are certain unintended issues that have arisen in implementing the changes from SB 1267. This bill will correct such situations.
- Currently, a notice of hearing for a contested case must include a statement of the facts asserted. The bill clarifies that as an alternative the notice can include an attachment with the facts as set forth in the complaint or petition.
- If a state agency has the burden of proof and intends to rely on a section of the statute or rule that has not been previously disclosed, then the agency must give notice of such statute or rule not later than the seventh day before the date set for the hearing.
- It also allows a licensing agency to prove that the license holder waived the opportunity to show compliance during judicial review of the agency's actions.
- It expands the allowable forms of notice of an agency decision to include methods specified by the agency rules. Currently, only personal service, service by electronic means, or service by mail are allowed.
- It also makes modifications to address when proper notice is received.
- Lastly, it extends the time to act on a motion for rehearing based on a request for a revised time to 100 days after the order is signed.
- The bill becomes effective on September 1, 2017.

Bills Filed
But Not Enacted



H.B. 462 – Rulemaking Notices

Relating to a report on legislation that includes a grant of rulemaking authority and rules adopted under that authority

- The bill required a state agency to include in the Texas Register notice of a proposed rule the bill number of the legislation that provided the authority for the agency to propose the rule.
- The bill also required the state agency to provide notice of the proposed rule to the primary author, any joint author, and legislative sponsor or joint sponsor of the enacting bill.
- On June 15, 2017, the Governor vetoed the bill.
- The veto stated the following:

  Agency rulemaking is an executive branch function, not a legislative function. Transparency in rulemaking is important, but it should not come at the expense of legislative encroachment on executive branch authority. Additionally, House Bill 462 has the potential to slow down the executive rulemaking process rather than enhance it.

Various Eminent Domain Bills

- There were 15 general eminent domain bills.
- H.B. 2684 – Relating to the acquisition of property by an entity with eminent domain authority
  - Left pending in House Land and Resource Management
- S.B. 740 - Relating to the acquisition of property by an entity with eminent domain authority
  - Referred to House Land and Resource Management

Various EMP Bills

- H.B. 407 - Relating to protection of the electric power transmission and distribution system
  - Referred to House State Affairs
- H.B. 787 - Relating to the security of the electric grid
  - Left Pending in Senate Business and Commerce
- H.B. 788 - Relating to enhancing the security of the electric grid, making an appropriation
  - Referred to House Appropriations
- S.B. 83 - Relating to protection of critical infrastructure from electromagnetic, geomagnetic, terrorist, and cyber-attack threats
  - Referred to House State Affairs
- SCR 55 - Requesting the lieutenant governor and the speaker of the house of representatives to create a joint interim committee to study the security of the Texas electric grid
  - Left Pending in House State Affairs

Public Information Act Disclosure Bills

- S.B. 407/H.B. 792 - Relating to the exception from disclosure under the public information law for information related to competition or bidding
- S.B. 408/H.B. 793 - Relating to the definition of a governmental body for the purposes of the public information law
- S.B. 1655 - Relating to the confidentiality of certain information