

CHAPTER 746

H.B. No. 2605

AN ACT

relating to collection and use of fees by, and management of the funds of, the water commission; making an appropriation.

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

SECTION 1. Section 5.235, Water Code, is amended to read as follows:

Sec. 5.235. FEES. (a) The executive director shall charge and collect the fees prescribed by law [this section]. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise.

(1) Notwithstanding other provisions, the commission by rule may establish due dates, schedules, and procedures for assessment, collection, and remittance of fees due the commission to ensure the cost-effective administration of revenue collection and cash management programs.

(2) Notwithstanding other provisions, the commission by rule shall establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Except as specifically provided by this section, the fee for filing an application or petition is \$100 plus the cost of any required notice. The fee for a by-pass permit shall be set by the commission at a reasonable amount to recover costs, but not less than \$100.

(c) The fee for filing a water permit application is \$100 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is \$100 plus the cost of required notice.

(e) 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 must pay a one-time nonrefundable application fee. The commission by rule may set the application fee in an amount not to exceed *the costs of reviewing and processing the application* [\$700], plus the cost of required notice. This fee is the only fee that the commission may charge with regard to the processing of an application for creation of a water district, addition of sewage or drainage powers, or conversion under this code.

(f) A person who files a bond issue application with the commission must pay an application fee set by the commission. The commission by rule may set the application fee in an amount not to exceed *the costs of reviewing and processing the application* [\$500], plus the cost of required notice. If the bonds are approved by the commission, the seller shall pay to the commission a percentage of the bond proceeds not later than the seventh business day after receipt of the bond proceeds. The commission by rule may set the percentage of the proceeds in an amount not to exceed 0.25 percent of the principal amount of the bonds actually issued. Revenue from these fees *and application fees under Subsection (e) of this section* shall be deposited in the state treasury and credited to the water utility [quality] fund. Proceeds of the fees shall be used to supplement any other funds available for paying expenses of the commission in supervising the various bond and construction activities of the districts filing the applications.

(g) The fee for recording an instrument in the office of the commission is \$1.25 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level.

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution.

(k) A fee charged under *Subsections (h) through (j) of this section* for one use of water under a permit from the commission may not exceed \$50,000 [~~\$25,000~~]. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed \$10,000 [~~\$5,000~~].

(l) The fees prescribed by *Subsections (h) through (j) of this section* are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds \$1,000, the applicant shall pay *one-half* [~~one-tenth~~] of the fee when the application is filed *and one-half*, [~~one-tenth~~] within 180 [30] days after notice is mailed to him that the permit is granted[, ~~and the balance before he begins to use water under the permit~~]. If the applicant does not pay all of the amount owed before beginning to use water under the permit, the permit is annulled.

(m) If a permit is annulled, the matter reverts to the status of a pending, filed application and, on the payment of use fees as provided by *Subsections (h) through (l) of this section* [~~subsection~~] together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

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

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

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

(C) A district as defined in Section 50.001 of this code that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(2) 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) The commission shall use the assessments collected *under this subsection* [~~from districts~~] solely to pay costs and expenses incurred by the commission in the regulation of districts, *water supply or sewer service corporations, and public utilities under Chapter 13, Water Code.*

~~[(4) The commission shall use the assessments collected from water supply or sewer service corporations solely to pay costs and expenses incurred by the commission in the regulation of water supply or sewer service corporations.~~

~~[(5) The commission shall use the assessments collected from public utilities solely to pay costs and expenses incurred by the commission in the regulation of public utilities.]~~

(4) [(6)] The commission shall annually use a portion of the assessments to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.

(5) [(7)] *The commission by rule may establish due dates, collection procedures, and penalties for late payment related to regulatory assessments under this subsection* [~~Except as provided by Paragraph (A) of this subdivision, assessments collected from retail customers for the prior 12 months are due on January 15 of each year~~]. The executive director shall collect all assessments from the utility service providers, and those funds shall be paid into the state treasury and credited to the water utility fund.

~~[(A) A utility service provider may make quarterly payments due on January 15, April 15, July 15, and October 15 of each year. If payments are made quarterly and received by the commission not later than the 30th day after the due date, the utility service provider may retain an administrative fee equal to 10 percent of the amount due for costs incurred in collecting and remitting the assessment.~~

~~[(B) The commission shall assess on a utility service provider a penalty equal to 10 percent of the amount due for any payment received after January 31. Funds delinquent for more than 30 days shall draw interest at the rate of 10 percent a year on the assessment and penalty due.]~~

(6) [(C)] The commission shall assess a penalty against a municipality with a population of more than 1.5 million that does not provide municipal water and sewer services in an annexed area on or before 4½ years after the annexation takes effect in accordance with Section 43.056, Local Government Code. A penalty assessed under this paragraph shall be not more than \$1,000 for each day the services are not provided after 4½ years after the annexation. A penalty collected under this paragraph shall be deposited into *the water utility* [~~a special~~] fund in the state treasury to be used to provide water and sewer service to residents of the city.

(7) [(8)] The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

SECTION 2. Subchapter F, Chapter 5, Water Code, is amended by adding Section 5.237 to read as follows:

Sec. 5.237. OPERATING FUND. (a) The Texas Natural Resource Conservation Commission Operating Fund is established in the treasury. At the request of the commission, the comptroller is authorized to transfer to an account in the operating fund any appropriations made to the commission for the purpose of making expenditures. After expenditures have been made from the operating fund and proper line-item appropriations identified, the commission shall submit periodic adjustments to the comptroller in summary amounts to record accurate cost allocations to the appropriate funds and accounts. Periodic adjustments under this section shall be made at least quarterly.

(b) The commission will establish and maintain accounting records adequate to support the periodic reconciliation of operating fund transfers and document expenditures from each fund or account. All expenditures shall be made consistent with provisions of law relating to the authorized use of each fund or account from which appropriations are made to the commission.

SECTION 3. Section 26.265, Water Code, is amended to read as follows:

Sec. 26.265. TEXAS SPILL RESPONSE FUND. (a) There is hereby created the Texas Spill Response Fund. This fund shall not exceed \$5 million, exclusive of fines and penalties received under this subchapter.

(b) The fund shall consist of money appropriated to it by the legislature and any fines, civil penalties, or other reimbursement to the fund provided for under this subchapter.

(c) The [~~executive director with the approval of the~~] commission may expend money in the fund only for the *purposes* [~~purpose~~] of:

(1) *response to and investigation of spills and discharges;*

(2) obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills; ~~and, including~~

(3) *the assessment of damages to and the restoration of land and aquatic resources held in trust or owned by the state.*

(d) In addition to any cause of action under Chapter 40, Natural Resources Code, the state has a cause of action against any responsible person for recovery of:

(1) expenditures out of the fund; and

(2) costs that would have been incurred or paid by the responsible person if the responsible person had fully carried out the duties under Section 26.266 of this code, including:

(A) reasonable costs of reasonable and necessary scientific studies to determine impacts of the spill on the environment and natural resources and to determine the manner in which to respond to spill impacts;

(B) costs of attorney services;

(C) out-of-pocket costs associated with state agency action;

(D) reasonable costs incurred by the state in cleanup operations, including costs of personnel, equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state; and

(E) costs of remediating injuries proximately caused by reasonable cleanup activities.

(e) The state's right to recover under Subsection (d) of this section arises whether or not expenditures have actually been made out of the fund.

(f) It is the intent of the legislature that the state attempt to recover the costs of cleanup according to the following priority:

(1) a responsible person; and

(2) the federal government to the extent that recovery from a responsible person is insufficient to pay the costs of cleanup.

(g) In a suit brought under Subsection (d) of this section, any responsible person who, after reasonable notice has been given by the executive director, has failed, after a reasonable period, to carry out his duties under Section 26.266 of this code is liable to the state for twice the costs incurred by the state under this subchapter in cleaning up the spill or discharge. Reasonable notice under this subsection must include a statement as to the basis for finding the person to whom notice is sent to be a responsible person. Any responsible person held liable under this subsection or Subsection (d) of this section has the right to recover indemnity or contribution from any third party who caused, suffered, allowed, or permitted the spill or discharge. Liability arising under this subsection or Subsection (d) of this section does not affect any rights the responsible person has against a third party whose acts caused or contributed to the spill or discharge.

SECTION 4. Subsection (h), Section 26.0135, Water Code, is amended to read as follows:

(h) The *commission* [~~Texas Water Commission~~] shall apportion, assess, and recover the reasonable costs of administering water quality management programs under this section from all users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. The costs to river authorities and others to conduct regional water quality assessment shall be subject to prior review and

approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality assessments and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177 of this chapter. *Costs recovered by the commission are to be deposited to the water quality fund and are appropriated to the commission for the administration of this section and the implementation of regional water quality assessments.*

SECTION 5. Subsection (c), Section 26.0291, Water Code, is amended to read as follows:

(c) The fees collected under this section shall be deposited in a special fund in the state treasury to be known as the *water quality* [~~waste treatment facility inspection~~] fund. Money in the fund shall be used as follows:

(1) to supplement any other funds available for paying expenses of the commission in inspecting waste treatment facilities;

(2) to pay for the issuance and renewal of certificates of competency under and to administer Section 26.0301 of this code;

(3) to pay for processing plans or amendments to plans and inspecting the construction of projects under those plans pursuant to Section 26.0461 of this code and rules of the commission adopted under Sections 26.046 and 26.0461 of this code; and

(4) to pay for any expenses of the commission necessary to obtain and administer the NPDES program in lieu of the federal government.

SECTION 6. Subsection (e), Section 26.0301, Water Code, is amended to read as follows:

(e) The commission by rule shall set a fee to be paid by each applicant or licensee on the issuance or renewal of a certificate of competency under this section. The amount of the fee is determined according to the costs of the commission in administering this section, but may not exceed \$25 annually for an individual wastewater treatment plant operator and \$50 annually for a person, company, corporation, firm, or partnership that is in the business as a wastewater treatment facility operations company. The commission shall deposit any fees collected under this subsection in the state treasury to the credit of the *water quality* [~~waste treatment facility inspection~~] fund.

SECTION 7. Subsection (h), Section 26.0461, Water Code, is amended to read as follows:

(h) A fee collected under this section shall be deposited in the State Treasury to the credit of the *water quality* [~~waste treatment facility inspection~~] fund.

SECTION 8. Sections 370.007 and 370.008, Health and Safety Code, are amended to read as follows:

Sec. 370.007. **TOXIC CHEMICAL RELEASE REPORTING FUNDS [FUND].** (a) *Toxic* [~~The toxic~~] chemical release reporting *funds consist* [~~fund consists~~] of money collected by the commission from:

(1) fees imposed on owners and operators of facilities required to submit a toxic chemical release form; and

(2) penalties imposed under this chapter.

(b) The commission may use the money collected *under this chapter* [~~and deposited in the fund~~] to pay for:

(1) costs incurred by the commission in implementing this chapter; and

(2) other commission activities necessary to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Sec. 370.008. **DISPOSITION OF [TOXIC CHEMICAL RELEASE FORM REPORTING] FEES.** (a) The owner or operator of a facility required to submit a toxic chemical release form under this chapter shall pay, at the time of submission, a fee of \$25 for each toxic chemical release form submitted.

(b) The maximum fee for a facility may not exceed \$250.

(c) The commission by rule may increase or decrease the toxic chemical release form reporting fee as necessary.

(d) Fees collected under this section shall be deposited in the state treasury to the credit of the *hazardous and solid waste fee* [~~toxic chemical release reporting~~] fund.

SECTION 9. The following funds and accounts, and revenues authorized to be deposited to these funds and accounts, are exempt from the provisions of Subsection (h), Section 403.094, Government Code. Except as amended by this Act, these funds and accounts are dedicated to the purposes for which they were established under the applicable provisions of law. The comptroller may, with the concurrence of the treasurer, establish any of the following funds as dedicated accounts in the general revenue fund, provided that such accounts maintain any attributes authorized under provisions of law:

(1) solid waste disposal fee fund authorized under Sections 361.013 and 361.014, Health and Safety Code;

(2) waste tire recycling fund authorized under Sections 361.474 and 361.475, Health and Safety Code;

(3) water well drillers fund authorized under Sections 32.014 and 33.012, Water Code;

(4) used oil recycling fund authorized under Section 371.061, Health and Safety Code;

(5) clean air fund authorized under Section 382.0622, Health and Safety Code;

(6) water quality fund authorized under Section 5.235(f), Water Code, and Sections 26.0291, 26.0301 and 26.0461, Water Code, as amended by this Act;

(7) water rights administration fund authorized under Section 12.113, Water Code;

(8) water utility fund authorized under Section 5.235, Water Code;

(9) spill response fund authorized under Section 26.265, Water Code;

(10) Texas irrigators fund authorized under Section 34.005, Water Code;

(11) hazardous and solid waste fees fund authorized under Sections 361.132 and 370.008, Health and Safety Code, as amended by this Act;

(12) hazardous and solid waste remediation fee fund authorized under Section 361.133, Health and Safety Code;

(13) storage tank fund authorized under Section 26.358, Water Code, and Section 8, Article 8900, V.A.C.S.; and

(14) petroleum storage tank remediation fund authorized under Section 26.3573, Water Code.

SECTION 10. The funds and accounts described in Section 9 of this Act are further exempt from any provision of Subsection (b), Section 403.095, Government Code, that would authorize the expenditure or transfer of dedicated revenues inconsistent with Section 9 of this Act. Nothing in this section shall otherwise limit the authority of the legislature to appropriate funds from any fund or account.

SECTION 11. The waste treatment facility inspection fund and the toxic chemical release reporting fund are abolished effective September 1, 1993.

SECTION 12. The comptroller shall establish the operating fund authorized under Section 2 of this Act effective September 1, 1993.

SECTION 13. No assessment created under this Act, or increase in an existing assessment authorized under this Act, will be collected prior to September 1, 1993.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 14, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2605 on May 28, 1993, by a non-record vote; the House adopted H.C.R. No. 181 authorizing certain corrections in H.B. No. 2605 on May 30, 1993, by a non-record vote; passed subject to the provisions of Article III,

Section 49a, of the Constitution of the State of Texas; passed by the Senate, with amendments, on May 26, 1993: Yeas 30, Nays 0; the Senate adopted H.C.R. No. 181 authorizing certain corrections in H.B. No. 2605 on May 30, 1993; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Approved June 16, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.