

**CHAPTER 660**

**S.B. No. 83**

**AN ACT**

relating to the payment date of certain public utility assessments and utility service and related service provided by or to the state, a state agency or institution, or a local government.

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

**SECTION 1.** The Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) is amended by adding Section 79A to read as follows:

Sec. 79A. (a) For the assessments covered by this section, assessments are due as provided by this section notwithstanding Section 79 of this Act, based on a public utility's estimate of its gross receipts.

(b) For the assessment due August 15, 1995, 50 percent of the assessment must be paid by August 15, 1994, and 50 percent must be paid by February 15, 1995.

(c) For the assessment due August 15, 1996, 50 percent of the assessment must be paid by August 15, 1995, and 50 percent must be paid by February 15, 1996.

(d) For the assessment due August 15, 1997, 50 percent of the assessment must be paid by August 15, 1996, and the remainder must be paid by August 15, 1997.

(e) Any assessment amounts underpaid on assessments due on August 15, 1995, or August 15, 1996, must be paid by those respective dates. Any assessment amounts overpaid shall be credited against following assessments.

(f) This section expires September 1, 1997.

SECTION 2. Section 1.03, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended by adding Subdivision (17) to read as follows:

(17) "State agency" has the meaning assigned by Section 2, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), to the extent such state agency must obtain the approval described in Section 31.401(a), Natural Resources Code.

SECTION 3. Section 4.09, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) A utility or municipally owned utility may not refuse to provide service to a state agency if pipeline capacity is available on existing facilities of the utility or municipally owned utility.

SECTION 4. The Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes) is amended by adding Section 5.061 to read as follows:

Sec. 5.061. **RATES CHARGED STATE.** The rates that a utility or municipally owned utility charges a state agency may not include an amount representing a gross receipts assessment, regulatory assessment, or similar expense of the utility. Any such reasonable expense not recovered from a state agency pursuant to this section may be recovered from other customers of the utility or municipally owned utility.

SECTION 5. Section 5.02, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.02. **JUST AND REASONABLE RATES.** (a) It shall be the duty of the regulatory authority to ensure that every rate made, demanded, or received by any gas utility, or by any two or more gas utilities jointly, is just and reasonable. Rates may not be unreasonably preferential, prejudicial, or discriminatory, but must be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the railroad commission may treat two or more municipalities served by a gas utility as a single class if the railroad commission considers that treatment to be appropriate.

(b) Rates charged or offered to be charged by a gas utility for pipeline-to-pipeline transactions and to transportation, industrial, and other similar large volume contract customers, but excluding direct sales-for-resale to gas distribution utilities at city gates, are considered to be just and reasonable and otherwise to comply with this section, and shall be approved by the regulatory authority, if:

(1) neither the gas utility nor the customer had an unfair advantage during the negotiations;

(2) the rates are substantially the same as rates between the gas utility and two or more of those customers under the same or similar conditions of service; or

(3) competition does or did exist either with another gas utility, another supplier of natural gas, or with a supplier of an alternative form of energy.

(c) Notwithstanding Subsection (b) of this section, absent a contract between a utility or municipally owned utility and a state agency for transportation service, the railroad commission shall, not later than the 210th day after the date either party files a request to set

a transportation rate, establish such transportation rate for the state agency. The railroad commission may order temporary rates as provided for under its appellate jurisdiction. The railroad commission shall base its determination of the transportation rate on the cost of providing the transportation service for both the distribution system and/or the transmission system of the utility or municipally owned utility. The railroad commission has exclusive original jurisdiction to establish transportation rates for state agencies under this subsection.

(d) If a complaint is filed with the railroad commission by a transmission pipeline purchaser of gas sold or transported under any such pipeline-to-pipeline or transportation rate, then the provisions of Subsection (b) shall not apply.

(e) [(d)] Notwithstanding any provision in this Act to the contrary, the regulatory authority may approve administratively any decrease in rates proposed by the applicant and agreed upon by all parties directly affected, unless the regulatory authority finds the proposed decrease not to be in the public interest.

(f) [(d)] The standard contained in Subsection (b)(1) of this section shall not apply to rates charged or offered to be charged to an affiliated pipeline utility. Gas purchase costs included in city gate rates proposed to be charged for sales-for-resale to gas distribution utilities at city gates may be reviewed as to reasonableness in city gate rate proceedings even though they have been previously approved as rates for other parties under Subsection (b) of this section.

SECTION 6. Article X, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), is amended by adding Sections 10.05 and 10.06 to read as follows:

*Sec. 10.05. BILLING FOR SERVICE TO STATE. A utility or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is rendered.*

*Sec. 10.06. TIME OF PAYMENT OF UTILITY BILLS BY STATE. (a) In this section, "utility" includes a municipally owned utility.*

*(b) The commission shall adopt rules concerning payment of utility bills that are consistent with Chapter 82, Acts of the 69th Legislature, Regular Session, 1985 (Article 601f, Vernon's Texas Civil Statutes), and its subsequent amendments.*

*(c) This Act does not prohibit a utility from entering into an agreement with the state or a state agency to establish a levelized or average monthly service billing plan. The agreement must require reconciliation of the levelized or equalized bills quarterly.*

SECTION 7. Subchapter E, Chapter 13, Water Code, is amended by adding Sections 13.141 and 13.142 to read as follows:

*Sec. 13.141. BILLING FOR SERVICE TO STATE. A utility or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is rendered.*

*Sec. 13.142. TIME OF PAYMENT OF UTILITY BILLS BY STATE. (a) In this section, "utility" includes a municipally owned utility.*

*(b) The commission shall adopt rules concerning payment of utility bills that are consistent with Chapter 82, Acts of the 69th Legislature, Regular Session, 1985 (Article 601f, Vernon's Texas Civil Statutes), and its subsequent amendments.*

*(c) This Act does not prohibit a utility from entering into an agreement with the state or a state agency to establish a levelized or average monthly service billing plan. The agreement must require reconciliation of the levelized or equalized bills quarterly.*

SECTION 8. Subchapter F, Chapter 13, Water Code, is amended by adding Section 13.1861 to read as follows:

*Sec. 13.1861. RATES CHARGED STATE. The rates that a utility or municipally owned utility charges the state or a state agency or institution may not include an amount representing a gross receipts assessment, regulatory assessment, or other similar expense. A regulatory authority may adopt reasonable rules specifying similar expenses to be excluded.*

SECTION 9. Section 403.056, Government Code, is amended by adding Subsection (e) to read as follows:

(e) *Notwithstanding Subsection (c), the comptroller may deliver a warrant for payment of a bill for gas or water service provided to the state or a state agency directly to the utility that provided the service. The comptroller may adopt rules to carry out this subsection, consistent with Chapter 82, Acts of the 69th Legislature, Regular Session, 1985 (Article 601f, Vernon's Texas Civil Statutes).*

SECTION 10. Subsections (b) and (c), Section 10.06, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The comptroller of public accounts shall establish in the state treasury a revolving fund account for the administration of this article. The account shall be used as a depository for funds received from entities served [~~and as a source of funds to purchase, lease, or otherwise acquire services, supplies, and equipment, and to pay salaries, wages, and other costs directly attributable to the provisions and operations of the system.~~]

(c) In order to provide an adequate cash flow as may be necessary for purposes of this article, using state agencies and other entities, upon proper notification, shall make monthly payments into the telecommunications revolving fund account from appropriated or other available funds. The legislature may appropriate funds for the operation of the system directly to the commission. In that case the revolving fund account shall be used to receive funds due from local government entities and other agencies to the extent that their funds are not subject to legislative appropriation. *The commission shall maintain in the revolving fund account sufficient amounts to pay the bills of the consolidated telecommunications systems and the centralized Capitol Complex telephone system. The commission shall certify amounts that exceed this amount to the comptroller, and the comptroller shall transfer the excess amounts to the credit of the statewide network applications account established by Section 22A, Information Resources Management Act (Article 4413(32j), Revised Statutes), and its subsequent amendments.*

SECTION 11. Section 1, Chapter 82, Acts of the 69th Legislature, Regular Session, 1985 (Article 601f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "State agency" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government that was created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code, and a river authority;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

(2) "Political subdivision" means:

(A) a county;

(B) an incorporated city or town;

(C) a public school district; or

(D) a special purpose district or authority.

(3) "Governmental entity" means a state agency or a political subdivision of this state.

(4) "Payment" means money owed to a vendor from whom a governmental entity acquires property or services.

(5) "Commission" means the State Purchasing and General Services Commission.

(6) "Vendor" means a person, corporation, association, partnership, or other legal entity that supplies goods and/or services to a governmental entity.

(7) "Services" includes gas and water utility service.

(8) "Subcontractor" means a person who contracts with a vendor to work, or has contracted with a vendor to contribute toward the completion of work done, for a governmental entity.

SECTION 12. Section 7, Chapter 82, Acts of the 69th Legislature, Regular Session, 1985 (Article 601f, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) *Notwithstanding Subsection (a) of this section, this Act applies to payments made by a state agency for gas or water utility service regardless of any contractual provision.*

SECTION 13. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 22A to read as follows:

*Sec. 22A. STATEWIDE NETWORK APPLICATIONS ACCOUNT. The statewide network applications account is established in the general revenue fund. Money credited to the account is from transfers of excess balances in the telecommunications revolving fund account as provided by Section 10.06(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), and its subsequent amendments. Amounts credited to the statewide network applications account may be appropriated only for the purchase, improvement, or maintenance of information resources, information resources technologies or applications, or related services and other items for use by a network of state agencies which may include agencies in the legislative branch of government.*

SECTION 14. Section 1, Article 6050, Revised Statutes, is amended to read as follows:

Sec. 1. In this article, "person" means an individual, company, or private corporation, or their lessees, trustees, and receivers. In Articles 6050–6066, Revised Civil Statutes of Texas, 1925, as amended, "gas utility," "public utility," or "utility" means a person owning, managing, operating, leasing or controlling within this State any pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

(a) Transporting, conveying, distributing or delivering natural gas: (1) for public use or service for compensation; (2) for sale to municipalities or persons or companies, in those cases referred to in Subsection (c) hereof, engaged in distributing or selling natural gas to the public; (3) for sale or delivery of natural gas to any person operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (4) for sale or delivery of natural gas to the public for domestic or other use.

(b) Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or is hereafter acquired by the exercise of the right of eminent domain.

(c) Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

(d) No person shall be deemed to be a "gas utility," "public utility," or "utility" solely because such person is an affiliate of such an entity. *The term "gas utility," "public utility," or "utility" does not include a person not otherwise a gas utility that transports gas on behalf of the state or a state agency or institution.*

(e) Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein.

SECTION 15. Article 6050, Revised Statutes, is amended by adding Section 6 to read as follows:

*Sec. 6. (a) A gas utility may not refuse to provide service to the state or a state agency or institution if pipeline capacity is available.*

*(b) In this section, "gas utility" includes a municipally owned utility as that term is defined by Section 1.03, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), and its subsequent amendments.*

SECTION 16. Section 1, Article 6053, Revised Statutes, is amended to read as follows:

Sec. 1. (a) The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or Commissioners precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any County or District Attorney in any county wherein such business or any part thereof may be carried on.

(b) *Notwithstanding Subsection (a) of this section, the Commission shall approve rates established under a contract between a gas utility or gas supplier and a State agency or institution. Absent a contract between a gas utility or gas supplier and a State agency or institution, the Commission shall, not later than the 120th day after the date either party files a request to set rates, establish rates not to exceed the gas utility's or gas supplier's cost-based transportation rate. The Commission shall base its determination of a cost-based transportation rate on the entire distribution system of the gas utility or gas supplier in this State. The Commission has exclusive original jurisdiction to establish rates under this subsection. In this subsection, the term "gas utility" or "gas supplier" includes a municipally owned utility as that term is defined by Section 1.03, Gas Utility Regulatory Act (Article 1446e, Vernon's Texas Civil Statutes), and its subsequent amendments.*

(c) If any transportation, industrial, or other similar large-volume contract customer who is an end-use customer of a gas utility (i) reduces or ceases purchases of natural gas or of natural gas service from the gas utility and (ii) purchases natural gas or natural gas service from another supplier or purchases an alternate form of energy, then the gas utility thereafter shall have no obligation to serve or to maintain the gas supply or the physical capacity to serve such customer, except to the extent that such customer continues to purchase natural gas or natural gas service of any class from the gas utility or to the extent the gas utility has a written contract to provide natural gas or natural gas service of any class to the customer. Nothing herein shall prevent the Railroad Commission from requiring that utilities comply with all orders of the Railroad Commission in apportioning gas under curtailment plans and orders.

SECTION 17. Title 110A, Revised Statutes, is amended by adding Article 6252-5g to read as follows:

*Art. 6252-5g. UTILITY BILLING AUDIT*

Sec. 1. *Except as provided by Section 3 of this article, every four years each state agency and institution of higher education shall perform an audit of its electric, telephone, gas, and water utility billing during the preceding four years or the maximum recovery period. The agency or institution may contract with a private consultant in the performance of the audit.*

Sec. 2. *The audit must provide information to allow the agency or institution to ensure that it is properly classified and subscribed and that the amounts paid for service are proper.*

Sec. 3. *Before the agency or institution conducts an audit it shall analyze the potential benefit of the audit. The agency or institution is not required to perform the audit if it determines that the savings and refunds provided by the audit will not exceed its cost.*

Sec. 4. *The audit must be funded from refunds received as a result of the audit. The agency or institution shall take appropriate action to recover any refund due. The attorney general may assist in recovering a refund. The amount of any refunds received shall be*

deposited in the state treasury to the credit of the general revenue fund. The costs of the audit shall be paid from amounts appropriated from those funds for that purpose.

*Sec. 5. During January and June of each year during which an audit is being conducted, the agency or institution shall submit to the governor, Legislative Budget Board, and comptroller a report on the status of the audit. The report must include a summary of the costs of the audit, current audit activity, a schedule of future activity, audit recommendations and results, pending refunds, and recovered refunds. Not later than the 30th day after the date an audit is completed, the agency or institution shall submit to the governor, Legislative Budget Board, and comptroller a report on the savings resulting from the audit, including their source, and the costs of the audit.*

SECTION 18. Subchapter B, Chapter 23, Education Code, is amended by adding Section 23.34 to read as follows:

*Sec. 23.34. UTILITY BILLING AUDIT. (a) Except as provided by Subsection (c) of this section, every four years each school district shall perform an audit of its electric, telephone, gas, and water utility billing during the preceding four years. The school district may contract with a private consultant in the performance of the audit.*

*(b) The audit must provide information to allow the school district to ensure that it is properly classified and subscribed and that the amounts paid for service are proper.*

*(c) Before the school district conducts an audit it shall analyze the potential benefit of the audit. The school district is not required to perform the audit if it determines that the savings and refunds provided by the audit will not exceed its cost.*

*(d) The audit must be funded from refunds received as a result of the audit. The school district shall take appropriate action to recover any refund due. The attorney general may assist in recovering a refund.*

*(e) During January and June of each year during which an audit is being conducted, the school district shall submit to the State Board of Education a report on the status of the audit. The report must include a summary of the costs of the audit, current audit activity, a schedule of future activity, audit recommendations and results, pending refunds, and recovered refunds. The State Board of Education shall submit a summary of the report to the governor, Legislative Budget Board, and comptroller. Not later than the 30th day after the date an audit is completed, the school district shall submit to the State Board of Education a report on the savings resulting from the audit, including their source, and the costs of the audit. The State Board of Education shall submit a copy of this report to the governor, Legislative Budget Board, and comptroller.*

SECTION 19. The attorney general, the Public Utility Commission of Texas, and the Railroad Commission of Texas shall develop and maintain systems to publicly monitor and verify state agency rates regulated by each of those commissions. The systems must provide for easy acquisition of information in a format that is easy to understand, subject to the protections provided by the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). Before February 1, 1995, each commission shall submit a report to the speaker of the house of representatives and the lieutenant governor.

SECTION 20. This Act takes effect September 1, 1993.

SECTION 21. 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 according to its terms, and it is so enacted.

Passed the Senate on March 25, 1993: Yeas 31, Nays 0; the Senate concurred in House amendments on May 30, 1993: Yeas 31, Nays 0; passed the House, with amendments on May 25, 1993, by a non-record vote.

Approved June 15, 1993.

Effective Sept. 1, 1993.