

## CHAPTER 977

## S.B. No. 947

## AN ACT

relating to updating provisions of the Water Code to conform to the reorganization of the state water agencies.

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

SECTION 1. Section 5.112, Water Code, as amended, is amended to read as follows:

Sec. 5.112. PUBLIC TESTIMONY POLICY. The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the *commission* [~~department~~].

SECTION 2. Sections 6.001, 6.019, and 6.052, Water Code, as added by Chapter 39, Acts of the 69th Legislature, Regular Session, 1985, are amended to read as follows:

Sec. 8.001 [~~6.001~~]. DEFINITIONS. In this chapter:

- (1) "Commission" means the Multi-State Water Resources Planning Commission.
- (2) "Commissioner" means a member of the commission.
- (3) "*Board*" means the Texas Water Development Board [~~"Department" means the Texas Department of Water Resources~~].

Sec. 8.019 [~~6.019~~]. STAFF. The *board* [~~department~~] shall provide necessary staff and support to the commission to assist the commission in carrying out this chapter.

Sec. 8.053 [~~6.053~~]. STUDIES. The commission shall request the *board* [~~department~~] to prepare studies that consider utilization of only that floodwater that is determined to be in excess of the reasonably foreseeable needs of any area where that floodwater is located.

SECTION 3. Chapter 6, Water Code, as added by Chapter 795, Acts of the 69th Legislature, Regular Session, 1985, is amended by adding Section 6.107 to read as follows:

*Sec. 6.107. POWER TO ENTER LAND. Any member or employee of the board may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive administrator, assist the board in the discharge of its duties.*

SECTION 4. Subsection (d), Section 11.132, Water Code, as amended, is amended to read as follows:

(d) The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to:

(A) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed *with the commission* [~~in the department~~]; and

(B) all navigation districts within the river basin concerned; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing has not been requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

SECTION 5. Sections 11.143 and 11.147, Water Code, as amended, are amended to read as follows:

Sec. 11.143. DOMESTIC AND LIVESTOCK RESERVOIR—USE FOR OTHER PURPOSES. (a) The owner of a dam or reservoir exempted under Section 11.142 of this code who desires to use water from the dam or reservoir for purposes other than domestic or livestock use shall obtain a permit to do so. He may obtain a regular permit, a seasonal permit, or a permit for a term of years. He may elect to obtain the permit by proceeding under this section or under the other provisions of this chapter governing issuance of permits.

(b) If the applicant elects to proceed under this section, he shall submit to the commission a sworn application, on a form furnished by the commission, containing the following information:

(1) the name and post-office address of the applicant;

(2) the nature and purpose of the use and the amount of water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the commission;

(7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and

(8) the approximate number of square miles in the drainage area above the dam or reservoir.

(c) If the permit is sought for irrigation, the application must also specify:

(1) the total number of irrigable acres in the area;

(2) the number of acres to be irrigated within the area in any one year; and

(3) the approximate distance and direction of the land to be irrigated from the midpoint of the dam or reservoir.

(d) Except as otherwise specifically provided by this subsection, before the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section. The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to each person whose claim or appropriation has been filed with the *commis-*

sion [~~department~~] and whose diversion point is downstream from that described in the application; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing is not requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) In the notice, the commission shall:

- (1) state the name and post-office address of the applicant;
- (2) state the date the application was filed;
- (3) state the purpose and extent of the proposed appropriation of water;
- (4) identify the source of supply and the place where the water is stored; and
- (5) specify the time and place of the hearing.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the commission and whose diversion point is downstream from that described in the application.

(g) [~~(f)~~] If on the date specified in the notice prescribed by Subsection (d) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene.

(h) [~~(g)~~] The applicant shall pay the filing fee prescribed by Section 12.111(b) of this code at the time he files the application.

(i) [~~(h)~~] The commission shall approve the application and issue the permit as applied for in whole or part if it determines that:

- (1) there is unappropriated water in the source of supply;
- (2) the applicant has met the requirements of this section;
- (3) the water is to be used for a beneficial purpose;
- (4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and
- (5) the proposed use will not impair existing water rights.

Sec. 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES AND INSTREAM USES. (a) In this section, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(c) For the purposes of making a determination under Subsection (b) of this section, the commission shall consider among other factors:

- (1) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in Section 11.149 of this code and other studies considered by the commission to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;
- (2) the ecology and productivity of the affected bay and estuary system;

(3) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary system;

(4) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(5) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(6) for purposes of this section, the declarations as to preferences for competing uses of water as found in Sections 11.024 and 11.033, Water Code, as well as the public policy statement in Section 1.003, Water Code.

(d) In its consideration of an application to store, take, or divert water, the commission shall consider the effect, if any, of the issuance of the permit on existing instream uses and water quality of the stream or river to which the application applies.

(e) The commission shall also consider the effect, if any, of the issuance of the permit on fish and wildlife habitats.

(f) On receipt of an application for a permit to store, take, or divert water, the commission shall send a copy of the permit application and any subsequent amendments to the Parks and Wildlife Department. At its option, the Parks and Wildlife Department may be a party in hearings on applications for permits to store, take, or divert water. In making a final decision on any application for a permit, the commission, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, and testimony presented by the Parks and Wildlife Department and the *board* [~~department~~].

(g) The failure of the Parks and Wildlife Department to appear as a party does not relieve the commission of the requirements of this section.

SECTION 6. Subsection (b), Section 11.207, Water Code, is amended to read as follows:

(b) The report shall state:

- (1) the quantity of water which was obtained from the well;
- (2) the nature of the uses to which the water was applied;
- (3) the change in the level of the well's water table; and
- (4) other information required by the *commission* [~~department~~].

SECTION 7. Section 11.3571, Water Code, is redesignated as Section 16.1871, Water Code, and amended to read as follows:

Sec. 16.1871 [~~11.3571~~]. ACQUISITION DATE. (a) If the board has made an initial payment prior to September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 16.186 [~~11.356~~] of this code. If the board makes its initial payment on or after September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 16.186 [~~11.356~~] of this code.

(b) If the board has executed a contract with the United States prior to September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 16.187 [~~11.357~~] of this code. If the board executes a contract with the United States on or after September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 16.187 [~~11.357~~] of this code.

SECTION 8. Section 15.001, Water Code, as amended, is amended to read as follows:

Sec. 15.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Water Commission.

(3) “Executive administrator” means the executive administrator of the Texas Water Development Board.

(4) “Executive director” means the executive director of the Texas Water Commission.

(5) [(4)] “Political subdivision” means a city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon’s Texas Civil Statutes).

(6) [(5)] “Project” means:

(A) any undertaking or work to conserve, convey, and develop surface or subsurface water resources in the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide nonstructural and structural flood control, drainage, subsidence control, recharge, chloride control, and desalinization, and to carry out other purposes defined by board rules; or

(B) any undertaking or work outside the state to provide for the maintenance and enhancement of the quality of water by eliminating saline inflow through well pumping and deep well injection of brine.

(7) [(6)] “Fund” means the water assistance fund.

(8) [(7)] “Loan fund” means the water loan assistance fund.

(9) [(8)] “Conservation” means:

(A) the development of water resources; and

(B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

SECTION 9. Sections 15.102 and 15.103, Water Code, as amended, are amended to read as follows:

Sec. 15.102. FINANCIAL ASSISTANCE. The loan fund may be used by the board to provide loans of financial assistance to political subdivisions for the construction, acquisition, improvement, or enlargement of projects involving water conservation, water development, or water quality enhancement, providing nonstructural and structural flood control, or drainage, project recreation lands and revenue-generating recreational improvements[, or subsidence control] within any watershed, or providing recharge, chloride control, *subsidence control*, or desalinization as provided by legislative appropriations, this chapter, and the board rules.

Sec. 15.103. APPLICATION FOR ASSISTANCE. (a) In an application to the board for [a loan of] financial assistance from the loan fund, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) the total cost of the project;

(4) the amount of state financial assistance requested;

(5) the plan for repaying the total cost of the project; and

(6) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for a loan of financial assistance from the loan fund unless it is submitted in affidavit form by the officials of the political subdivision. The board shall prescribe the affidavit form in its rules.

(c) The rules shall not restrict or prohibit the board from requiring additional factual material from an applicant.

(d) If an applicant has a program of water conservation, he shall state in his application that he has such a program and shall describe that program in the manner required by board rules.

(e) If the applicant claims an exemption under Subsection (c), Section 15.106 [17.125], of this code, he shall state the exemption in his application and provide information relating to the exemption as required by board rules.

SECTION 10. Subsection (b), Section 15.106, Water Code, is amended to read as follows:

(b) Before the board grants the application or provides any financial assistance under an application, it shall require an applicant to adopt or to have already implemented a program of water conservation for the more efficient use of water that incorporates the practices, techniques, or technology prescribed by Subdivision (9)(B), Section 15.001, of this code and that the *board* [department] determines will meet reasonably anticipated local needs and conditions. The program may include but is not limited to any or all of the following:

- (1) restrictions on discretionary water uses, such as lawn watering;
- (2) plumbing code standards for water conservation in new building construction;
- (3) retrofit programs to improve water-use efficiency in existing buildings;
- (4) educational programs;
- (5) universal metering;
- (6) conservation-oriented water rate structures;
- (7) drought contingency plans; and
- (8) distribution system leak detection and repair.

SECTION 11. Subsection (a), Section 15.113, Water Code, as amended, is amended to read as follows:

(a) The board may inspect the construction of a project any time to assure that:

- (1) the contractor is substantially complying with the *approved* engineering plans of the project [~~as submitted when approval of the feasibility of the project was sought~~]; and
- (2) the contractor is constructing the project in accordance with sound engineering principles.

SECTION 12. Sections 15.114 and 15.115, Water Code, as amended, are amended to read as follows:

Sec. 15.114. ALTERATION OF PLANS. After [board] approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the *executive administrator* [~~development fund manager~~] authorizes the alteration. For a waste water treatment plant or other facility required to have commission approval of plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Sec. 15.115. CERTIFICATE OF APPROVAL. The *executive administrator* [board] may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to the *approved* plans [~~as approved by the board or as altered with the development fund manager's approval~~];
  - (2) failure to construct the works in accordance with sound engineering principles;
- or
- (3) failure to comply with any terms of the contract.

SECTION 13. Subsection (a), Section 15.212, Water Code, is amended to read as follows:

(a) On receipt by the executive *administrator* [~~director~~] from the paying agent for any insured bond of a written notice by registered or certified mail that a payment on the bond is due but has not been made to the paying agent by the issuer and that the issuer's

reserves are insufficient to cover the payment, the executive *administrator* [~~director~~] shall have a deposit of funds made with the paying agent sufficient to cover the payment due on the bond less any amount already held by the paying agent to pay the principal of and interest on the bond.

SECTION 14. Sections 15.214, 15.215, 15.216, 15.218, 15.307, 15.329, 15.330, and 15.331, Water Code, as amended, are amended to read as follows:

Sec. 15.214. INSPECTION OF PROJECTS. (a) The *board* [~~department~~] may inspect at any time the construction of a project being constructed with proceeds of revenue bonds insured by the board to assure that:

(1) the contractor is substantially complying with the *approved* engineering plans of the project [~~as submitted when approval of the feasibility of the project was sought~~]; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the *board* [~~department~~] does not subject the state to any civil liability.

Sec. 15.215. ALTERATION OF PLANS. After [~~board~~] approval of engineering plans, a political subdivision or water supply corporation may not make any substantial or material alteration in the plans unless the executive *administrator* [~~director~~] authorizes the alteration.

Sec. 15.216. CERTIFICATE OF APPROVAL. The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to *approved* plans [~~as approved by the board or as altered with the executive director's approval~~];

(2) failure to construct the project in accordance with sound engineering principles; or

(3) failure to comply with any terms of the contract.

Sec. 15.218. REPORT. (a) Not later than January 1 of each odd-numbered year, the *board* [~~department~~] shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report relating to the financial impact of the bond insurance program during the immediately preceding biennium.

(b) The report shall include:

(1) the total amount of insurance coverage authorized by the board during the biennium;

(2) the number of insurance coverage authorizations granted by the board;

(3) a list of the issuers receiving insurance coverage from the board during the biennium and the amount of insurance coverage provided to each issuer;

(4) an analysis of the marketability of the bonds of the issuers receiving insurance coverage during the biennium and the effect that the insurance coverage had on interest rates and bond ratings for those issuers;

(5) an analysis of the marketability of bonds issued by the state and its agencies during the biennium and the effect that the bond insurance program had on interest rates on state bonds and the state's bond rating;

(6) an analysis of the impact on the commercial bond market and bond interest rates generally during the biennium as a result of the implementation of the bond insurance program with particular emphasis on the impact on bonds of political subdivisions and water supply corporations that did not participate in the program;

(7) recommendations for changes in the bond issuance program that will favorably affect marketability of state bonds and issuer's bonds, bond ratings, and interest rates; and

(8) any other information, analyses, and recommendations that the *board* [~~department~~] considers necessary to give the governor and the legislature a complete understanding of the financial impact of the bond insurance program.

(c) The state comptroller and the state treasurer on request shall provide to the *board* [~~department~~] all information and assistance necessary for the *board* [~~department~~] to prepare this report.

Sec. 15.307. FACILITIES WANTED BY POLITICAL SUBDIVISION. The board shall not acquire any facility to the extent that the board finds that the political subdivision:

- (1) is willing and reasonably able to finance the acquisition of the facility;
- (2) has qualified by obtaining the necessary permit; and
- (3) has proposals that are *inconsistent* [~~consistent~~] with the objectives of the state water plan.

Sec. 15.329. INSPECTION OF PROJECTS. (a) The board may inspect the construction of a project any time to assure that:

- (1) the contractor is substantially complying with the *approved engineering plans* of the project [~~as submitted when approval of the feasibility of the project was sought~~]; and
- (2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board does not subject the state to any civil liability.

Sec. 15.330. ALTERATION OF PLANS. After [~~board~~] approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the *executive administrator* [~~development fund manager~~] authorizes the alteration. For a waste water treatment plant or other facility required to have commission approval of the plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Sec. 15.331. CERTIFICATE OF APPROVAL. The *executive administrator* [~~board~~] may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to *approved plans* [~~approved by the board or as altered with the development fund manager's approval~~];
  - (2) failure to construct the works in accordance with sound engineering principles;
- or
- (3) failure to comply with any terms of the contract.

SECTION 15. Subsection (g), Section 15.406, Water Code, is amended to read as follows:

(g) The board may require that regional facility plans developed under contracts entered into under this section be made available to the *commission* [~~department~~] as provided by board rules.

SECTION 16. Sections 15.434, 15.533, 15.540, and 16.232, Water Code, as amended, are amended to read as follows:

Sec. 15.434. USE OF MONEY IN FUND. Money deposited to the credit of the agricultural soil and water conservation fund, on appropriation by the legislature to the *board* [~~department~~], the Department of Agriculture, the State Soil and Water Conservation Board, the Texas Agricultural Experiment Station, the Texas Agricultural Extension Service, public colleges and universities, and other state agencies shall be used for the following purposes:

- (1) agricultural water conservation technical assistance programs;
- (2) agricultural water conservation, education, and demonstration programs;
- (3) purchase of equipment, including demonstration and educational equipment;
- (4) grants made to underground water conservation districts for the purchase of equipment under programs established by Subchapter H of this chapter;
- (5) research in water utilization and conservation including artificial recharge and secondary recovery of underground water;



- (6) desalinization;
- (7) weather modification;
- (8) technical assistance programs for developing on-farm soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts, as provided by Subchapter H, Chapter 201, Agriculture Code;
- (9) research and demonstration relating to the production of native and low-water-use plants and water-efficient crops;
- (10) a pilot program for low-interest loans for the purchase of agricultural water conservation systems established by Subchapter I of this chapter; and
- (11) research, demonstration, and education relating to brush control.

Sec. 15.533. APPLICATION. A lender that desires to obtain a loan under this subchapter shall file with the executive *administrator* [~~director~~] an application in the manner and in the form provided by board rules.

Sec. 15.540. RESERVE FUND. The conservation loan account is created in the Texas Water Development Fund and the *board* [~~department~~] shall deposit in that account a portion of the amounts appropriated to the agricultural soil and water conservation fund that is sufficient to provide a reserve to pay the state's portion of any defaults under Section 15.538 of this code.

Sec. 16.232. LOCATION OF PROJECTS; REPORTS. The executive *director* [~~administrator~~] shall maintain files reflecting engineering reports, studies, drawings, and staff findings and recommendations pertaining to the location and effect of reclamation projects.

SECTION 17. The title of Subchapter B, Chapter 16, Water Code, is amended to read as follows:

SUBCHAPTER B. DUTIES OF THE EXECUTIVE  
ADMINISTRATOR [~~DIRECTOR~~]

SECTION 18. Section 18.015, Water Code, is amended to read as follows:

Sec. 18.015. ADVISORY COMMITTEES. The commission may establish advisory committees to advise the *commission* [~~department~~] and to make recommendations to the *commission* [~~department~~] concerning legislation, policies, administration, research, and other matters.

SECTION 19. Subdivision (22), Section 26.001, Water Code, as amended (effective on delegation of NPDES authority), is amended to read as follows:

(22) "Identified state supplement to an NPDES permit" means any part of a permit on which the *commission* [~~board~~] has entered a written designation to indicate that the *commission* [~~board~~] has adopted that part solely in order to carry out the *commission's* [~~board's~~] duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

SECTION 20. The title to Subchapter B, Chapter 18, Water Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF  
COMMISSION [~~BOARD~~]

SECTION 21. Sections 26.0151 and 26.025, Water Code, as amended, are amended to read as follows:

Sec. 26.0151. PUBLIC INFORMATION. (a) The *commission* [~~department~~] shall provide for publishing or otherwise releasing on a regular basis as public information:

- (1) the results of inspections and investigations conducted under Section 26.014 of this code; and

(2) any other information routinely prepared by the *commission* [department] relating to compliance with this chapter or with a rule or order adopted under this chapter.

(b) The *commission* [department] shall establish a procedure by which, in response to a written request, a person or organization will be sent a copy of an inspection, investigation, or compliance report for a specified facility or system or for facilities or systems in a specified area or, on a regular basis, a copy of the information released under Subsection (a) of this section.

(c) The *commission* [department] shall charge a reasonable fee for each copy sent under Subsection (b) of this section. The fee must be set at an amount that is estimated to recover the full cost of producing and copying and mailing a copy of the report and must be paid in cash or by cashier's check.

(d) A copy of a report shall be sent to the person or organization requesting it not later than the 30th day after the date on which the fee is paid or on which the report is made, whichever is later.

(e) This section does not apply to any information excepted under Section 3, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 26.025. HEARINGS ON STANDARDS; NOTICE TO WHOM. Notice of a hearing under Section 26.024 of this code shall be given to each of the following that the commission believes may be affected:

(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

(2) the holders of rights to appropriate water from the water in question as shown by the records of the *commission* [department]; and

(3) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

SECTION 22. Subsection (e), Section 26.0191, Water Code, as amended, is amended to read as follows:

(e) At the hearing, the commission shall affirm, modify, or set aside the emergency order. Any hearing on an emergency order shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), or the rules of the commission. Any set of *commission* [department] rules concerning a hearing on an emergency order must include provisions for presentation of evidence by the applicant under oath, presentation of rebuttal evidence, and cross-examination of witnesses.

SECTION 23. Subsection (a), Section 26.043, Water Code, as amended, is amended to read as follows:

(a) The legislature recognizes that various river authorities and municipal water districts and authorities of the state have signed, and that others are authorized to sign and may sign, a document entitled "The State of Texas Water Pollution Control Compact" (hereinafter called the "compact"), which was approved by Order of the Texas Water Quality Board on March 26, 1971, and which is now on file in the official records of the *commission* [department], wherein each of the signatories is by law an official agency of the state, created pursuant to Article XVI, Section 59 of the Texas Constitution and operating on a multiple county or regional basis, and that collectively those signatories constitute an agency of the state authorized to agree to pay, and to pay, for and on behalf of the state not less than 25 percent of the estimated costs of all water pollution control projects in the state, wherever located, for which federal grants are to be made pursuant to Clause (7), Subsection (b), Section 1158, Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1158), or any similar law, in accordance with and subject to the terms and conditions of the compact. The compact provides a method for taking advantage of increased federal grants for water pollution control projects by virtue of the state payment which will be made from the proceeds from the sale of bonds by the

signatories to the compact. The compact is hereby ratified and approved, and it is hereby provided that Section 30.026 of this code shall not constitute a limitation or restriction on any signatory with respect to any contract entered into pursuant to the compact or with respect to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made, and such signatory shall not be required to obtain the consent of any other river authority or conservation and reclamation district which is not a signatory with respect to any such contract or project. Each signatory to the compact is empowered and authorized to do any and all things and to take any and all action and to execute any and all contracts and documents which are necessary or convenient in carrying out the purposes and objectives of the compact and issuing bonds pursuant thereto, with reference to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made.

SECTION 24. Subsection (c), Section 26.044, Water Code, as amended by Section 1.089, Chapter 795, Acts of the 69th Legislature, Regular Session, 1985, is repealed, and that subsection as amended by Section 79, Chapter 239, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

(c) The *commission* [board] may delegate the administration and performance of the certification function to the executive director or to any other governmental entity. The *commission* [board] shall collect the following fees from applicants for certification:

Boat Certificates (annual):	
Initial Certificates for Pump-out	\$35
Pump-out Renewal	\$25
Marine Sanitation Device (biennial):	
Boat over 26 Feet or Houseboat	\$15
Boat 26 Feet or less with Permanent Device	\$15

All certification fees shall be paid to the entity performing the certification function. All fees collected by any state agency shall be deposited in a special fund for use by that agency in administering and performing the certification function and shall not be deposited in the General Revenue Fund of the state.

SECTION 25. Section 21.101, Water Code (Section 26.048, Vernon's Texas Water Code), is redesignated as Section 16.093, Water Code, and is amended to read as follows:

Sec. 16.093 [21.101]. FEDERAL GRANTS FOR THE CONSTRUCTION OF TREATMENT WORKS; PROCESSING FEES. (a) The board may execute agreements with the United States Environmental Protection Agency or its successor agency and any other federal agency that administers programs providing federal grants to local governments for the construction of treatment works, as defined in Section 17.272 [21.602] of this code. The board may exercise all duties and responsibilities required for the administration by the board of the federal construction grant program.

(b) Each applicant for a federal construction grant, under a grant program administered by the board, shall pay to the board a reasonable grant processing fee as prescribed by the board. The grant processing fee charged by the board shall be cost-eligible under the grant program and shall not exceed one-half of one percent of the total eligible project cost, including the planning, design, and construction phases, for any one project. The board shall promulgate regulations establishing schedules for timely payment of grant processing fees. For grants awarded in steps under a federal program, the time schedule for payment of grant processing fees shall provide for payment reasonably apportioned among each step grant awarded. The grant processing fee for each step grant or for any other grant not awarded in steps shall be due and payable immediately following the award of such grant. No grant processing fee shall be levied for any grant awarded prior to the effective date of this Act; but the grant processing fee established in this Subsection (b) shall be levied on grants awarded on or after the effective date of this Act where the board has processed the grant pursuant to an agreement with the United States Environmental Protection Agency, or its successor agency, or any other federal agency that administers programs providing federal grants to local governments for the construction of treatment works.

(c) All grant processing fees collected by the board shall be deposited in a special fund of the state treasury for use by the board in processing and administering the grant programs, and shall not be deposited in the general revenue fund of the state.

SECTION 26. Subsection (b), Section 26.084, Water Code, as amended, is amended to read as follows:

(b) Before exercising the authority granted in this section, the commission shall find affirmatively:

(1) that there is an existing or proposed regional or area-wide system designated under Section 26.083 of this code which is capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the commission under this section;

(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service;

(3) that it is feasible for the service to be provided on the basis of waste collection, treatment, and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest;

(4) that inclusion of the person or persons who are the subject of an action taken by the commission under this section will not suffer undue financial hardship as a result of inclusion in a regional or area-wide system; and

(5) that a majority of the votes cast in any election held under Section 26.087 [21.206] of this code favor the creation of the regional or area-wide system or systems operated by the designated regional entity.

SECTION 27. Subsection (c), Section 26.087, Water Code, as amended, is amended to read as follows:

(c) Notice of the election shall state the day and place or places for holding the election, and the proposition to be voted on. The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the regional or area-wide system or systems is to be located. The first publication of the notice shall be at least 14 days before the day set for the election. Notice of the election shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the *commission* [board] may be affected.

SECTION 28. Section 26.217, Water Code, as amended, effective on delegation of NPDES authority, is amended to read as follows:

Sec. 26.217. VENUE. Venue for prosecution of any alleged violation of Section 26.212 [21.552] is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred.

SECTION 29. Subsection (c), Section 26.267, Water Code, as amended, is amended to read as follows:

(c) Notwithstanding any other provision of this subchapter, the state or the *commission* [department] shall utilize any and all procedures relating to releases or threatened releases of solid wastes contained in the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) prior to utilizing the provisions of this subchapter with respect to such releases or threatened releases.

SECTION 30. Subsections (a) and (e), Section 26.268, Water Code, are amended to read as follows:

(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the commission, except that the *commission* [department] may not assess penalties under this section for violations of this subchapter which are also violations of any permit, rule, or order applicable to hazardous waste under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).

(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and where reasonable precautions to minimize the spill's impacts and reasonable efforts to clean it up were made by the responsible person in accordance with the rules and orders of the commission, unless the *commission* [~~department~~] finds that the discharge or spill is the result of the negligence of the responsible person.

SECTION 31. The title to Subchapter B, Chapter 27, Water Code, is amended to read as follows:

SUBCHAPTER B. JURISDICTION OF *COMMISSION* [~~DEPARTMENT~~]

SECTION 32. Subsection (g), Section 27.036, Water Code, as added by Chapter 921, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

(g) Application for injection well permits covering brine mining submitted to the Texas *Water Commission* [~~Department of Water Resources~~] before the effective date of this section for which permits have not been issued by the *commission* [~~Texas Water Commission~~] shall be transmitted to the *railroad commission* [~~Railroad Commission of Texas~~].

SECTION 33. Subsections (d), (e), and (f), Section 27.051, Water Code, as amended, are amended to read as follows:

(d) The *commission* [~~Texas Water Commission~~], in determining if the use or installation of an injection well for the disposal of hazardous waste is in the public interest under Subsection (a)(1) of this section, shall consider, but shall not be limited to the consideration of:

- (1) compliance history of the applicant in accordance with the provisions of Subsection (e) of this section;
- (2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available to manage the types and classes of hazardous waste; and
- (3) whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the *commission* [~~department~~] in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the *commission* [~~department of water resources~~] for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy also covers the injection well itself.

(e) The *commission* [~~department of water resources~~] shall establish a procedure by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the *commission* [~~department of water resources~~] under this chapter for any injection well for which a permit has been issued under this chapter. The compliance summaries shall be made available to the applicant and any interested person after the *commission* [~~department of water resources~~] has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the *commission* [~~department of water resources~~] under this chapter may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. All evidence admitted, including compliance history, shall be considered by the *commission* [~~department of water resources~~] in determining whether to issue, amend, extend or renew a permit.

(f) In the issuance of a permit for a hazardous waste injection well into a salt dome, the *commission* [~~department of water resources~~] shall consider the location of any geologic fault in the salt dome in the immediate proximity of the injection well bore, the presence of an underground water aquifer, and the presence of sulfur mines or oil and gas wells in the area.

SECTION 34. Sections 41.0082, 42.009, 43.0052, 44.009, and 58.186, Water Code, as amended, are amended to read as follows:

Sec. 41.0082. COOPERATION OF TEXAS ~~[DEPARTMENT OF]~~ WATER COMMISSION ~~[RESOURCES]~~. The Texas ~~[Department of]~~ Water Commission ~~[Resources]~~ shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Sec. 42.009. COOPERATION OF TEXAS ~~[DEPARTMENT OF]~~ WATER COMMISSION ~~[RESOURCES]~~. The Texas ~~[Department of]~~ Water Commission ~~[Resources]~~ shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Sec. 43.0052. COOPERATION OF TEXAS ~~[DEPARTMENT OF]~~ WATER COMMISSION ~~[RESOURCES]~~. The Texas ~~[Department of]~~ Water Commission ~~[Resources]~~ shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Sec. 44.009. COOPERATION OF TEXAS ~~[DEPARTMENT OF]~~ WATER COMMISSION ~~[RESOURCES]~~. The Texas ~~[Department of]~~ Water Commission ~~[Resources]~~ shall cooperate with the members in the performance of their duties and shall furnish them any available data and information they need.

Sec. 58.186. OBTAINING TOPOGRAPHIC MAPS AND DATA. The *Texas Water Development Board* ~~[department]~~ shall furnish to a district topographic maps and data concerning projects undertaken by the district.

SECTION 35. Subsection (d), Section 64.011, Water Code, as amended, is amended to read as follows:

(d) The executive *administrator* ~~[director]~~ of the *Texas Water Development Board* ~~[Department of Water Resources]~~ shall prepare available evidence relating to the import area demonstrating the cost and benefit to be reasonably expected from the importation of water into the area and the estimated quantities of water that are or may be made available and are required for import into the area, as well as evidence showing the economic, environmental, and human costs and benefits that will result within each county within the import area if water is imported into the area.

SECTION 36. Section 66.001, Water Code, is amended to read as follows:

Sec. 66.001. DEFINITIONS. In this chapter:

- (1) "District" means a stormwater control district.
- (2) "Commission" means the Texas Water Commission.
- (3) ~~["Department" means the Texas Department of Water Resources.~~

~~[(4)] "Executive director" means the executive director of the *commission* [department].~~

~~(4) [(5)] "Board" means the board of directors of a district.~~

~~(5) [(6)] "Director" means a member of the board.~~

SECTION 37. Subsection (d), Section 66.019, Water Code, is amended to read as follows:

(d) A copy of the commission's order including its findings and decision shall be mailed to the petitioners as provided by rules of the *commission* ~~[department]~~.

SECTION 38. Section 45.006, Water Code, is repealed.

SECTION 39. 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 the Senate on April 24, 1987, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on June 1, 1987, by the following vote: Yeas 31, Nays 0. Passed the House, with amendment, on May 29, 1987, by the following vote: Yeas 146, Nays 1, one present not voting.

Approved June 19, 1987.

Effective June 19, 1987.