

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE B. WATER RIGHTS

CHAPTER 12. PROVISIONS GENERALLY APPLICABLE TO WATER RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.001. DEFINITIONS. The definitions contained in Subchapter A, Chapter 11 of this code apply to this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. GENERAL POWERS AND DUTIES RELATING TO WATER RIGHTS

Sec. 12.011. PERMIT APPLICATIONS. The commission shall receive, administer, and act on all applications for permits and permit amendments:

(1) to appropriate public water for beneficial use or storage; or

(2) to construct works for the impoundment, storage, diversion, or transportation of public water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff. Sept. 1, 1985.

Sec. 12.012. EVALUATION OF OUTSTANDING PERMITS. The commission shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff. Sept. 1, 1985.

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or

12 of this code.

(b) In this section, "political subdivision" means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed; provided, however, the utility commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The utility commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.07, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 7, eff. September 1, 2013.

Sec. 12.014. USE OF COMMISSION SURVEYS; POLICY. The commission shall make use of surveys, studies, and investigations conducted by the staff of the commission in order to ascertain the character of the principal requirements of the district regional

division of the watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff. Sept. 1, 1985.

Sec. 12.015. POWER TO CONDEMN WORKS. (a) The commission may condemn existing works if their existence or operation may, in the judgment of the commission, become a public menace or dangerous to life and property.

(b) In all cases of proposed condemnation, the commission shall notify the interested party of the contemplated action and shall specify a time for him to appear and be heard.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 12.016. POWER TO INSPECT. The executive director or his authorized agent may inspect any impoundment, diversion, or distribution works during construction to determine whether or not they are being constructed in a safe manner and whether or not they are being constructed according to the order of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 12.017. POWER TO ENTER LAND. Any member or employee of the commission 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 director, assist the commission in the discharge of its duties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.031, eff.

Sept. 1, 1985.

SUBCHAPTER C. PROJECTS

Sec. 12.051. FEDERAL PROJECTS. (a) In this section:

(1) "Federal project" means an engineering undertaking or work to construct, enlarge, or extend a dam, lake, reservoir, or other water-storage or flood-control work or a drainage, reclamation, or canalization undertaking or any combination of these financed in whole or in part with funds of the United States.

(2) "Engineering report" means the plans, data, profiles, maps, estimates, and drawings prepared in connection with a federal project.

(3) "Federal agency" means the Corps of Engineers of the United States Army, the Bureau of Reclamation of the Department of Interior, the Soil Conservation Service of the Department of Agriculture, the United States Section of the International Boundary and Water Commission, or any other agency of the United States, the function of which includes the conservation, development, retardation by impounding, control, or study of the water resources of Texas or the United States.

(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the board for its study concerning the feasibility of the federal project.

(c) The board shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The board shall publish notice of the time, date, place, nature, and purpose of the public hearing once each week for two consecutive weeks before the date stated in the notice in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

(d) After hearing all the evidence both for and against approval of the federal project, the board shall enter its order approving or disapproving the feasibility of the federal project,

and the order shall include the board's reasons for approval or disapproval.

(e) In determining feasibility, the board shall consider, among other relevant factors:

(1) the effect of the federal project on water users on the stream as certified by the commission;

(2) the public interest to be served;

(3) the development of damsites to the optimum potential for water conservation;

(4) the integration of the federal project with other water conservation activities;

(5) the protection of the state's interests in its water resources; and

(6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

(f) The board shall forward to the governor a certified copy of its order. The board's finding that the federal project is either feasible or not feasible is final, and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

(g) The provisions of this section do not apply to the state soil conservation board as long as that board is designated by the governor as the authorized state agency having supervisory responsibility to approve or disapprove of projects designed to effectuate watershed-protection and flood-prevention programs initiated in cooperation with the United States Department of Agriculture.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.032, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 20, Sec. 1, eff. Sept. 1, 1987.

Sec. 12.052. DAM SAFETY. (a) The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state. In performing

the commission's duties under this subsection, the commission shall identify and focus on the most hazardous dams in the state.

(b) Rules and orders made by the commission shall be made after proper notice and hearing as provided in the rules of the commission.

(b-1) The commission may enter into an agreement with an owner of a dam who is required to reevaluate the adequacy of an existing dam or spillway. The agreement may include timelines to achieve compliance with the commission's design criteria and may authorize deferral of compliance with the criteria, as appropriate.

(c) If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's final, nonappealable order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than \$5,000 a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

(d) If the commission determines that the existing condition of the dam is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the commission to remedy or prevent the occurrence of the situation will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of a dam to repair, modify, maintain, dewater, or remove the dam which the commission determines is unsafe. The emergency order may be issued without notice to the dam owner or with notice the commission considers practicable under the circumstances. The notice does not have to comply with Chapter [2001](#), Government Code.

(e) If the commission issues an emergency order under authority of this section without notice to the dam owner, the

commission shall fix a time and place for a hearing which shall be held as soon as practicable to affirm, modify, or set aside the emergency order. The notice does not have to comply with Chapter 2001, Government Code. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted as appropriate under Chapter 2001, Government Code.

(e-1) The commission shall exempt an owner of a dam located on private property from meeting requirements related to dam safety if the dam:

(1) at maximum capacity impounds less than 500 acre-feet;

(2) has a hazard classification of low or significant;

(3) is located in a county with a population of less than 350,000; and

(4) is not located inside the corporate limits of a municipality.

(e-2) Notwithstanding Subsection (e-1), an owner of a dam shall comply with operation and maintenance requirements established by commission rule.

(e-3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 641, Sec. 2, eff. September 1, 2013.

(f) Nothing in this section or in rules or orders made by the commission shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.033, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(63), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 3.04, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.07, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 641 (H.B. 677), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 641 (H.B. 677), Sec. 2, eff.

September 1, 2013.

SUBCHAPTER D. WATER DISTRICTS

Sec. 12.081. CONTINUING RIGHT OF SUPERVISION OF DISTRICTS AND AUTHORITIES CREATED UNDER ARTICLE III, SECTION 52 AND ARTICLE XVI, SECTION 59 OF THE TEXAS CONSTITUTION. (a) The powers and duties of all districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution are subject to the continuing right of supervision of the State of Texas by and through the commission or its successor, and this supervision may include but is not limited to the authority to:

(1) inquire into the competence, fitness, and reputation of the officers and directors of any district or authority;

(2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;

(3) issue subpoenas for witnesses to carry out its authority under this subsection;

(4) institute investigations and hearings using examiners appointed by the commission;

(5) issue rules necessary to supervise the districts and authorities, except that such rules shall not apply to water quality ordinances adopted by any river authority which meet or exceed minimum requirements established by the commission; and

(6) the right of supervision granted herein shall not apply to matters relating to electric utility operations.

(b) The commission shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report of any findings made under this section.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.034, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 196, Sec. 2, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.283, eff. Sept. 1, 1995.

Sec. 12.082. DUTY TO INVESTIGATE FRESH WATER SUPPLY DISTRICT PROJECTS. (a) In this section:

(1) "District" means fresh water supply district.

(2) "Designated agent" means any licensed engineer selected by the executive director to perform the functions specified in this section.

(b) The commission shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

(c) A district that wants to issue bonds for any purpose shall submit to the commission a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

(d) The executive director or his designated agent shall examine the application and other information and shall visit the project and carefully inspect it. The executive director or his designated agent may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The executive director or his designated agent shall file with the commission written suggestions for changes and improvements and shall furnish a copy of the suggestions to the board of the district. If the commission finally approves or refuses to approve the project or the issuance of bonds for the improvements it shall make a full written report, file it in its office, and furnish a copy of the report to the board of the district.

(f) During the course of construction of the project and improvements, no substantial alterations shall be made in the plans and specifications without the approval of the executive director. The executive director or his designated agent has full authority to inspect the improvements at any time during construction to determine if the project is being constructed in accordance with approved plans and specifications.

(g) If the executive director finds that the project is not

being constructed in accordance with the approved plans and specifications, the executive director immediately shall notify in writing by certified mail each member of the board of the district and its manager. If, within 10 days after the notice is mailed, the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of that fact to the attorney general.

(h) After the attorney general receives the notice, he may bring an action for injunctive relief, or he may bring quo warranto proceedings against the directors. Venue for either of these actions is exclusively in the district of Travis County.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.035, eff. Sept. 1, 1985.

Sec. 12.083. DISTRICTS; CREATION, INVESTIGATIONS AND BONDS. (a) The commission succeeds to the duties and responsibilities of the Texas Water Rights Commission with regard to the creation of districts as defined by Section 50.001(1) of this code and to approve or disapprove the issuance of the bonds of all such districts.

(b) The executive director shall investigate and report on the organization and feasibility of all districts as defined by Section 50.001(1) of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. FEES

Sec. 12.112. FEES: EXEMPTIONS. (a) The commission, the board, and the Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

(b) The board is exempt from payment of any other fees required by this code or any other statute relating to applications for water rights or amendments thereto or relating to water resources administration to the extent the board has not contracted

for the sale of water under a water right on which such fees are based.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.036, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 647, Sec. 4, eff. Aug. 30, 1993.

Sec. 12.113. DISPOSITION OF FEES, ETC. (a) The commission shall immediately deposit in the State Treasury the fees and charges it collects.

(b) The commission shall deposit all costs collected under Subchapter G, Chapter 11 of this code in the State Treasury to the credit of the watermaster administration account, from which the commission shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.036, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 333, Sec. 4, eff. Sept. 1, 1997.

Sec. 12.114. DISPOSITION OF FEES PENDING DETERMINATION. The commission shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the commission shall return the fees to the applicant.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.036, eff. Sept. 1, 1985.