

BILL ANALYSIS

C.S.H.B. 2184
By: Geren
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Commission on Environmental Quality (TCEQ) is authorized to change prices in certain contracts for water. However, some concern exists that the commission's authority places a state agency in a difficult position of reforming a contract entered into by willing parties.

Historically, where a written contract existed, the state routinely set a rate using established methodology. However, the approach to those cases changed as a result of a lawsuit filed by the City of Fort Worth in the early 1990s concerning a wholesale sewer rate dispute with the City of Arlington. Based on the constitutional provision prohibiting impairment of contracts, the court found in *Texas Water Comm'n v. City of Fort Worth* that the commission must first find that the contract rate adversely affects the public interest. As a result of that case, the commission adopted the rules in Chapter 291, Subchapter I, which establish the criteria for determining whether a rate charged under a written contract adversely affects the public interest. If this test is met, the rules provide that the commission could determine a reasonable rate.

Some stakeholders may harbor reservations, arguing that while reforming a contract between willing parties may seem questionable, the state should maintain a proper role in contract disputes over a resource which the state owns and upon which the state authorizes permits. However, TCEQ generally processes fewer than five wholesale cases per year, and most are settled before they reach the commission level.

C.S.H.B. 2184 amends current law to prohibit TCEQ from amending, interpreting, impairing, or modifying a written contract for wholesale water between a willing buyer and a willing seller.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The bill amends Chapter 11, Water Code, Chapter 12, Water Code, and Chapter 13, Water Code, to prohibit the Texas Commission on Environmental Quality from amending, interpreting, impairing, or modifying a wholesale water contract. The bill also places additional requirements on a petitioner under Chapter 11, Water Code, which require a written petition to include information that the petitioner has not entered into a contract with the party owning or controlling the water supply.

The bill also provides that the changes made by the Act apply only to a contract executed on or after the effective date of the Act. A contract executed before the effective date of the Act is governed by the law in effect on the date the contract was executed and the former law is continued in effect for that purpose.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2184 stipulates that the Act applies only to contracts executed for the wholesale provision of water and not for only the provision of water.

C.S.H.B. 2184 also adds a grandfather provision which states that the changes made by the Act apply only to a contract executed on or after the effective date of the Act. A contract executed before the effective date of the Act is governed by the law in effect on the date the contract was executed and the former law is continued in effect for that purpose.