

BILL ANALYSIS

C.S.H.B. 387
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, concern exists that the commission's authority places a state agency in the difficult position of reforming a contract entered into by willing parties, and that this role is at odds with the principles of contract law.

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 1990's concerning a wholesale sewer rate dispute with the City of Arlington. In *Texas Water Commission v. City of Fort Worth*, the court held that the commission first must 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 then may go on to determine a reasonable rate.

Some stakeholders may harbor reservations, arguing that while reforming a contract between willing parties may seem questionable, the state should play a role in contract disputes over a resource which the state owns and upon which the state issues permits. However, TCEQ generally processes fewer than five wholesale cases per year, and most are settled before they reach the commission level. This leads one to believe that some parties may use TCEQ's authority to amend written contracts solely as a bargaining tool in contract negotiations. C.S.H.B. 387 addresses this issue by limiting TCEQ's ability to enter into contract disputes between private parties.

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

C.S.H.B. 387 amends Water Code, sec. 11.041, sec. 12.013, and sec. 13.041 to prohibit TCEQ from amending, interpreting, impairing, or modifying a water supply contract, unless all the parties to the contract are governmental entities.

The bill also amends sec. 11.041 to require that a petitioner complaining about denial of water, or unjust or discriminatory pricing, must show that the petitioner does not have a current contract with the party owning or controlling the water supply.

EFFECTIVE DATE

C.S.H.B. 387 takes effect immediately if it receives a 2/3rds vote in both chambers, otherwise it takes effect Sept. 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the original version of the bill to specify that TCEQ is not prohibited from amending, interpreting, impairing, or modifying a water supply contract if all parties to the contract are governmental entities.

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