

## **BILL ANALYSIS**

Senate Research Center  
80R1523 CBH-D

S.B. 726  
By: Nichols  
Natural Resources  
3/30/2007  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, when a water and wastewater utility proposes a rate increase the ratepayers are entitled to contest the proposed increase. When ratepayers initiate a contested case hearing through the Texas Commission on Environmental Quality (TCEQ) both the utility and the ratepayers hire legal representation to argue their case. Contested case hearings can continue for long periods of time which can result in substantial legal fees for both sides.

Upon resolution of a contested case hearing, the water and waste water utility is entitled to recover attorney's fees and other legal expenses from the ratepayers. Legal expenses can include compensation of expert witnesses, discovery costs, mediation, consulting, and other services. The utility companies are authorized by TCEQ to incorporate the expenses into the rates they offer to customers. Therefore, customers pay the burden of the company's legal expenses through the rates they pay, regardless of whether the utility wins or loses a case. This affects the ability of a customer to negotiate the rates they pay because companies have no incentive to negotiate without a hearing since the costs of going to court can be recovered through the rates the companies charge.

As proposed, S.B. 726 prohibits TCEQ from authorizing utility companies' legal expenses to be included in the ratemaking formula to ensure fairness to both the utility company and the customer.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 1. Amends Section 13.185 (h), Water Code, as follows:

(h) Prohibits the regulatory authority from including for ratemaking purposes the legal expenses, including attorney's fees and court costs, incurred by a water and sewer utility in a contested proceeding under Section 13.187 or in an appeal of that proceeding, other than legal expenses described by Section 13.084. Makes conforming changes.

SECTION 2. Provides that this Act applies only to a statement of intent for which a regulatory authority has not issued a final decision before the effective date of this Act. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.