

BILL ANALYSIS

C.S.H.B. 882
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In some cases, a landlord unjustly interrupts the tenant's utilities. Under current law, a tenant has no legal recourse other than to sue the landlord, which does not provide an immediate remedy to the situation.

C.S.H.B. 882 authorizes a tenant to obtain relief by filing a sworn complaint for restoration with the justice court when such an injustice has occurred. If the justice reasonably believes that unlawful utility disconnection has occurred, the bill authorizes the court to issue a writ of restoration of utility service requiring the landlord to restore utility service.

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. 882 amends the Property Code to authorize a tenant to obtain relief if the landlord has interrupted a utility service. The bill requires a tenant to file with the justice court in the precinct in which the rental premises are located a sworn complaint specifying the facts of the alleged unlawful utility disconnection by the landlord or the landlord's agent, and to state orally under oath to the justice the facts of the alleged unlawful utility disconnection. The bill authorizes a justice court in which a tenant has properly filed a sworn complaint to issue a writ of restoration of utility service, if the justice reasonably believes an unlawful utility disconnection has likely occurred, that entitles the tenant to immediate and temporary restoration of the disconnected utility service, pending a final hearing on the tenant's sworn complaint. The bill requires such a writ to be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer suit.

C.S.H.B. 882 entitles a landlord to a hearing on the tenant's sworn complaint for restoration of utility service. The bill requires the writ to notify the landlord of the right to a hearing, and requires the hearing to be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing. The bill authorizes a judgment for court costs to be rendered against a landlord that fails to request a hearing on the tenant's sworn complaint before the eighth day after the date of service of the writ on the landlord. The bill authorizes a party to appeal from the court's judgment at the hearing on the sworn complaint in the same manner as a party may appeal a judgment in a forcible detainer suit. The bill provides that an issued writ of possession supersedes a writ of restoration of utility service.

C.S.H.B. 882 provides that the failure of the landlord or the person on whom a writ is served to immediately comply with the writ or obey the writ is grounds for contempt of court against the landlord or the person on whom the writ was served under state law. The bill authorizes a tenant or the tenant's attorney, if the writ is disobeyed, to file in the court in which the action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or

omissions constituting the disobedience. The bill requires the justice, on receipt of an affidavit, to issue a show cause order, directing the person to appear on a designated date and show cause why the person should not be adjudged in contempt of court. The bill authorizes the justice, if the justice finds after considering the evidence at the hearing that the person had directly or indirectly disobeyed the writ, to commit the person to jail without bail until the person purges the contempt action or omission in a manner and form as the justice may direct. The bill authorizes the justice, if the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, to find the person in contempt and assess punishment under state law.

C.S.H.B. 882 authorizes a landlord to recover in a separate cause of action from a tenant who in bad faith files a sworn complaint resulting in a writ being served on the landlord or the landlord's agent an amount equal to actual damages, one month's rent or \$500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

C.S.H.B. 882 provides that the fee for filing a sworn complaint for restoration of utility service is the same as that for filing a civil action in justice court, that the fee for service of a writ of restoration of utility service is the same as that for service of a writ of possession, and that the fee for service of a show cause order is the same as that for service of a civil citation. The bill authorizes the justice to defer payment of the tenant's filing fees and service costs for the sworn complaint and writ, and authorize court costs to be waived only if the tenant executes a pauper's affidavit.

C.S.H.B. 882 repeals Sections 92.008(c), (d), and (e), Property Code, authorizing a landlord to interrupt or cause the interruption of electrical service furnished to a tenant by the landlord under certain conditions.

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 882 differs from the original by authorizing a tenant to obtain relief only if the landlord has interrupted a utility service, whereas the original also authorized a tenant to obtain relief if the landlord has locked the tenant out of leased premises; removed a door, window, or appliance; or violated other provisions prohibiting removal of property or exclusion of a residential tenant. The substitute, in the provision authorizing a justice to issue a writ of restoration, differs from the original by only entitling the tenant to immediate and temporary restoration of the disconnected utility service, whereas the original also entitles the tenant to immediate and temporary possession of the premises and the restoration of an appliance or premises to the condition that existed before the alleged unlawful conduct.

C.S.H.B. 882, unlike the original, adds a new section to the Property Code setting forth in detail the procedures and penalties relating to a tenant's right of restoration after unlawful utility disconnection, whereas the original amends existing provisions relating to a tenant's right of reentry.

C.S.H.B. 882, unlike the original, repeals provisions authorizing a landlord, under certain conditions, to interrupt or cause the interruption of electrical service furnished to a tenant by the landlord.

C.S.H.B. 882 differs from the original by providing for a January 1, 2010 effective date, whereas the original provides for a September 1, 2009, effective date.