

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 637
By: Nichols et al.
Natural Resources
4/14/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law 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 utility is entitled to recover attorney's fees and other legal expenses from the ratepayers. Legal expenses can include compensation of expert witnesses, discovery, mediation, consulting, and other services. TCEQ is allowed to incorporate these expenses into customer water and wastewater rates, even if the utility loses the rate case. Ultimately, win or lose, the customers have to pay for both their legal expenses and those of the utility. This provision of the law creates a disincentive for a utility to negotiate with ratepayers for an expedited conclusion to a contested case hearing.

C.S.S.B. 637 amends current law relating to the recovery of certain rate case expenses by an investor-owned water and sewer utility.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

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

(h) Prohibits the regulatory authority from including for ratemaking purposes:

- (1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;
- (2) costs of processing a refund or credit under Section 13.187;
- (3) legal expenses, including attorney's fees and court costs, incurred by an investor-owned water and sewer utility in a contested proceeding under Section 13.187 (Statement of Intent to Change Rates; Hearing; Determination of Rate Level) or an appeal of that proceeding unless the proceeding or appeal results in the approval of the utility's proposed rate, other than legal expenses described by Section 13.084 (Authority of Governing Body; Cost Reimbursement); or
- (4) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including executive salaries, advertising expenses, legal expenses not described by Subdivision (3), and civil penalties or fines.

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. Provides that a

statement of intent for which a regulatory authority has issued a final decision before the effective date of this Act is governed by the law in effect on the date that final decision was issued and that law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2011.