

BILL ANALYSIS

Senate Research Center

S.B. 958
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

River authorities and special districts were created by the legislature for the essential purpose of managing and selling water. Even though they were created as quasi-governmental entities, river authorities and special districts engage in commercial business operations, negotiating and entering into contracts for the sale and delivery of water with public and private sector entities.

Electric generators contract with river authorities and special districts to purchase the water they need to supply critical electric generation facilities throughout Texas. Since the prolonged drought has taken a toll on Texas water supplies, investors and state regulators such as the Electric Reliability Council of Texas have required evidence of firm water supplies with enforceable contracts.

Over the years the courts in Texas have provided river authorities and special districts with immunity from suit, even in contract situations. It is important to note that sovereign immunity was granted to river authorities and special districts in contract disputes by court actions, not express legislative authority. Texas is one of the few states that recognize sovereign immunity in a breach of contract context.

S.B. 958 waives sovereign immunity of a special district or river authority in the very limited circumstances when it voluntarily enters into water supply contracts to sell water that is used by the purchaser in connection with the generation of electricity. S.B. 958 provides for the basic remedies available to all other commercial operators in Texas when they enter into freely negotiated contracts.

S.B. 958 amends current law relating to the liability of certain special-purpose districts or authorities providing water to a purchaser for the generation of electricity.

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 Title 5, Civil Practice and Remedies Code, by adding Chapter 113, as follows:

CHAPTER 113. WATER SUPPLY CONTRACT CLAIM AGAINST LOCAL DISTRICT OR AUTHORITY

Sec. 113.001. DEFINITIONS. Defines "adjudicating a claim" and "local district or authority" in this chapter.

Sec. 113.002. WAIVER OF IMMUNITY TO SUIT FOR CLAIM REGARDING WATER SUPPLY CONTRACT. Provides that a local district or authority that enters into a written contract stating the essential terms under which the local district or authority is to provide water to a purchaser for use in connection with the generation of electricity waives sovereign immunity to suit for the purpose of adjudicating a claim that

the local district or authority breached the contract by not providing water, or access to water, according to the contract's terms.

Sec. 113.003. REMEDIES. (a) Authorizes remedies awarded in a proceeding adjudicating a claim under this chapter, except as provided by Subsection (b), to include any remedy available for breach of contract that is not inconsistent with the terms of the contract, including the cost of cover and specific performance.

(b) Prohibits remedies awarded in a proceeding adjudicating a claim under this chapter from including consequential or exemplary damages.

Sec. 113.004. NO WAIVER OF OTHER DEFENSES. Provides that this chapter does not waive a defense or a limitation on damages available to a party to a contract other than a sovereign immunity to suit.

Sec. 113.005. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. Provides that this chapter does not waive sovereign immunity to suit in federal court.

Sec. 113.006. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. Provides that this chapter does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort.

Sec. 113.007. NO NEW OR ADDITIONAL WATER RIGHTS. Provides that this chapter does not grant any user of water any new or additional rights to water or any new or additional priority to water rights. Provides that this chapter does not confer any rights inconsistent with the terms of the contract that is the subject of a dispute under Section 113.002.

Sec. 113.008. AUTHORITY OF REGULATORY AGENCIES; COMPLIANCE WITH REGULATORY ORDER. (a) Provides that this chapter does not limit the authority of the Texas Commission on Environmental Quality (TCEQ) or any other state regulatory agency.

(b) Provides that compliance with an order of TCEQ or any other state regulatory agency that expressly curtails water delivery to a specific electric generating facility is not considered a breach of contract for the purpose of this chapter.

Sec. 113.009. NO THIRD-PARTY BENEFICIARIES. (a) Provides that this chapter waives sovereign immunity only for the benefit of:

(1) a party to the contract that is the subject of a dispute under Section 113.002; or

(2) the assignee of a party to the contract, if assignment of an interest in the contract is permitted by the terms of the contract.

(b) Prohibits a party authorized by this chapter to sue for a cause of action of breach of contract, except for an assignment described by Subsection (a)(2), from transferring or assigning that cause of action to any person.

SECTION 2. (a) Makes application of the change in law made by this Act prospective.

(b) Provides that the change in law made by this Act does not waive sovereign immunity to suit for any claims related to or arising out of a contract that was the subject of litigation that was adjudicated or dismissed on the basis of sovereign immunity prior to the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2013.