

BILL ANALYSIS

S.B. 958
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties observe that river authorities and certain special districts were created by the legislature for the purpose of managing and selling water, and that 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. Those parties further observe that electric generators contract with river authorities and special districts to purchase the water they need to supply critical electric generation facilities throughout Texas and that 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.

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

Interested parties contend that a commercial operator that contracts with a special-purpose district or river authority to purchase water for use in electricity generation should have the same basic remedies available to other commercial operators that enter into freely negotiated contracts in Texas. S.B. 958 seeks to amend current law relating to the liability of certain special-purpose districts or authorities.

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

S.B. 958 amends the Civil Practice and Remedies Code to establish 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. The bill authorizes remedies awarded in a proceeding adjudicating a claim under the bill's provisions 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, and prohibits such remedies from including consequential or exemplary damages. The bill establishes that its provisions do not waive a defense or a limitation on damages available to a party to a contract other than sovereign immunity to suit, do not waive sovereign immunity to suit in federal court or for a cause of action for a negligent or intentional tort, do not grant any user of water any new or additional rights to water or any new or additional

priority to water rights, and do not confer any rights inconsistent with the terms of the contract that is the subject of a dispute.

S.B. 958 establishes that its provisions do not limit the authority of the Texas Commission on Environmental Quality (TCEQ) or any other state regulatory agency and 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 purposes of the bill's provisions. The bill's provisions waive sovereign immunity only for the benefit of a party to the contract that is the subject of a dispute or for the benefit of the assignee of a party to the contract, if assignment of an interest in the contract is permitted by the terms of the contract. The bill prohibits a party authorized under the bill's provisions to sue for a cause of action of breach of contract from transferring or assigning that cause of action to any person, unless assignment of an interest in the contract is permitted by the terms of the contract.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.