

BILL ANALYSIS

C.S.H.B. 1964
By: Murphy
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that certain water billing disputes may sometimes result in costly and time-consuming litigation, the cost of which may ultimately be borne by water users through increased charges. C.S.H.B. 1964 seeks to address this issue by revising certain water rates and services provisions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1964 amends the Water Code to remove the authorization for a tenant, if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the Public Utility Commission of Texas (PUC) regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, to recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. The bill also removes the exemption from civil liability for an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager who proves that a violation was a good faith, unintentional mistake. The bill instead authorizes a person claiming a violation of a PUC rule regarding utility costs by an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner to file a complaint with the PUC. If the PUC determines that the owner or condominium manager overcharged a complaining tenant for water or wastewater service from the retail public utility, the bill requires the PUC to require the owner or condominium manager, as applicable, to repay the complaining tenant the amount overcharged. The bill defines "overcharge" as the amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under provisions relating to submetering and nonsubmetering for apartments and manufactured home rental communities and other multiple use facilities. The bill grants the PUC exclusive jurisdiction for violations under such provisions and establishes that nothing in these provisions of the bill relating to restitution limits or impairs the PUC enforcement authority under water rates and services violation and enforcement provisions.

C.S.H.B. 1964 defines "condominium manager" or "manager of a condominium" and "utility costs" or "utility service costs" for purposes of provisions relating to submetering and nonsubmetering for apartments and manufactured home rental communities and other multiple use facilities. The bill redefines "owner" for those same purposes and excludes from the term the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

C.S.H.B. 1964 establishes that provisions relating to PUC submetering rules and nonsubmetering rules expressly do not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs. The bill establishes a rebuttable presumption that an owner of an apartment house or a multiple use facility or a manager of a condominium that adopted an existing program to submeter or allocate water from a previous owner or manager has not committed an act giving rise to a cause of action under provisions relating to plumbing fixture requirements.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1964 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 13.501, Water Code, is amended by amending Subdivision (5) and adding Subdivision (9) to read as follows:

No equivalent provision.

(5) "Owner" means the legal titleholder of an apartment house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation expressly identified in a lease agreement as ~~[that purports to be]~~ the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 13.501, Water Code, is amended by adding Subdivisions (1-a) and (9) and amending Subdivision (5) to read as follows:

(1-a) "Condominium manager" or "manager of a condominium" means a condominium unit owners' association organized under Section 82.101, Property Code, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code.

(5) "Owner" means the legal titleholder of an apartment house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation expressly identified in a lease agreement as ~~[that purports to be]~~ the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

(9) "Utility costs" or "utility service costs" means any amount charged to the owner by a retail public utility for water or wastewater service.

SECTION 2. Section 13.503, Water Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, or any other amount that is unrelated to utility costs.

SECTION 3. Section 13.5031, Water Code, is amended to read as follows:

Sec. 13.5031. NONSUBMETERING RULES. (a) Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

- (1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;
- (2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;
- (3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or

(9) "Utility costs" or "utility service costs" means any amount charged to the owner by a retail public utility for water or wastewater service.

SECTION 2. Section 13.503, Water Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

SECTION 3. Section 13.5031, Water Code, is amended to read as follows:

Sec. 13.5031. NONSUBMETERING RULES. (a) Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

- (1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;
- (2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;
- (3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or

multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

(b) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, or any other amount that is unrelated to utility costs.

SECTION 4. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. **ENFORCEMENT.** (a) In this section, "overcharge" means the amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter.

No equivalent provision.

(b) If [In addition to the enforcement provisions contained in Subchapter K, if] an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility

multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

(b) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

SECTION 4. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. **RESTITUTION [ENFORCEMENT].** (a) In this section, "overcharge" means the amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter.

(b) The utility commission has exclusive jurisdiction for violations under this subchapter.

(c) If [In addition to the enforcement provisions contained in Subchapter K, if] an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility

commission regarding utility costs, the person claiming the violation may file a complaint with the utility commission. If the utility commission determines that the owner or condominium manager overcharged a complaining tenant for water or wastewater service from the retail public utility, the utility commission shall require the owner or condominium manager, as applicable, to repay the complaining tenant the amount overcharged.

No equivalent provision.

(c) If the owner or condominium manager fails to comply with the utility commission's order to repay the overcharge, the complaining tenant may recover from the owner or condominium manager in an action brought under this section [submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover] three times the amount of the [any] overcharge, a civil penalty of \$100 [equal to one month's rent], reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable [for a civil penalty] if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

(d) A tenant must exhaust administrative remedies before the tenant brings an action in district court against an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner who violates a requirement of this subchapter or a rule of the utility commission adopted under this subchapter.

SECTION 5. Section 13.506, Water Code, is amended.

SECTION 6. This Act takes effect

commission regarding utility costs, the person claiming the violation may file a complaint with the utility commission. If the utility commission determines that the owner or condominium manager overcharged a complaining tenant for water or wastewater service from the retail public utility, the utility commission shall require the owner or condominium manager, as applicable, to repay the complaining tenant the amount overcharged.

(d) Nothing in this section limits or impairs the utility commission's enforcement authority under Subchapter K

~~[submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake].~~

No equivalent provision.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.