

SUBJECT: Limiting water supply corporation liability for firefighting activities

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Counts, Walker, Cook, King, R. Lewis, Moffat, Puente
0 nays
2 absent — Corte, Culberson

WITNESSES: For — Everett H. Derr, McAllen Fire Department; Johnny G. Economedes, Edinburg Fire Department
Against — None

BACKGROUND : Water supply corporations (WSCs) are non-profit, member-owned cooperatives that supply drinking water and/or wastewater services to their members. They are often located in rural areas of the state or in areas where cities have not or cannot extend their services.

Under the Texas Tort Claims Act, cities and volunteer fire departments have limited liability when performing certain “essential government functions.” This limited liability does not extend to “proprietary functions,” such as city-owned and operated amusement parks or public utilities.

DIGEST: HB 1217 would permit a city or volunteer fire department to contract with a WSC to supply water and fire hydrants for firefighting activities. Actions taken to provide water under these conditions would constitute an essential government function rather than a proprietary one. WSCs that contracted to supply water or equipment for fire-fighting could not be held to greater liability than would be incurred if the city or fire department were to directly supply the water or equipment.

HB 1217 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

HB 1217 would help extend fire protection to many Texans who live on the outskirts of cities and thus help save lives and property. It would be an innovative solution to a conundrum that has long perplexed local governments — how to ensure adequate fire-fighting capabilities in nearby jurisdictions where service cannot be extended because of federal loan payback provisions. WSCs that have borrowed federally backed funds are legally protected from interference from another entity while the loan is outstanding. Because of the threat of liability from damages that could arise from firefighting activities, WSCs in many cases have refused to let cities and volunteer fire departments use their water systems. HB 1217 would remedy this problem by permitting WSCs to limit their liability through contracts with cities or fire departments.

Current law already limits the liability of cities and volunteer fire departments for damages arising due to firefighting activities, but WSCs are not granted the same protection. If, for example, the pressure in the water system of a small WSC failed during a fire and a house burned to the ground, the WSC could be sued for damages. A small WSC could easily be bankrupted by a single lawsuit. Although many water supply corporations have sufficient water capacity and flow to operate fire hydrant systems, they are reluctant to do so out of fear that they will be held liable if water pressure fluctuated or failed.

HB 1217 would not give WSCs immunity from liability for negligence but would merely limit their liability when a city or fire department borrowed their system or equipment to fight a fire.

**OPPONENTS
SAY:**

Although HB 1217 may make WSCs more willing to allow cities to use their systems, freeing water supply corporations from liability for firefighting activities performed by cities and volunteer fire departments could remove incentive for them to maintain pressure adequate to efficiently fight fires.

NOTES:

The companion bill, SB 859 by Lucio, would specify that a water supply and sewer service corporation could enter into a contract to supply water to a city hydrant or the city could supply water to a hydrant owned by a water supply and sewer service corporation. SB 859 was reported favorably, as

substituted, by the Intergovernmental Relations Committee and recommended for the Local and Uncontested Calendar.