

SUBJECT: Allowing landlord to charge late fee on submetered or allocated water bills

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Giddings, Kolkhorst, Martinez Fischer, J. Moreno, Solomons,
 Zedler

0 nays

3 absent — Elkins, Bohac, Oliveira

WITNESSES: For — David Mintz, Texas Apartment Association

Against — None

BACKGROUND: Water Code, sec. 13.502 allows an apartment owner, manufactured home rental community owner, multiple-use facility owner, or condominium manager to provide for submetering of each unit to measure the amount of water used. Submetering is required for any of these rental properties on which construction began on after January 1, 2003. Submetering allows the landlord to send each tenant a bill for the amount of water actually consumed in the tenant's unit. When property is not submetered, the landlord sends the tenant an allocated bill based on a formula set by the Texas Commission on Environmental Quality (TCEQ). The landlord is responsible for paying the entirety of the property's master-metered water bill and collects submetered or allocated bills from the residents.

Landlords must notify tenants clearly in writing of the billing method for water at the time of signing the lease or rental agreement. Landlords must provide tenants with a lease addendum outlining the billing program and either a summary or complete set of the TCEQ rules. Landlords must give tenants at least 16 days to pay their water bills. Tenants have the right to review their billing records. If a tenant disputes a bill, the landlord must investigate and respond back to the tenant within 30 days. If a tenant is not satisfied with the resolution, he or she may file a complaint with the TCEQ. If the TCEQ finds that the landlord violated the rules, it may fine the landlord or seek other remedies.

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DIGEST:	CSHB 2388 would require TCEQ rules to allow landlords to charge tenants a late fee of no more than 5 percent of a submetered or allocated water bill. The bill would take effect September 1, 2003.
SUPPORTERS SAY:	<p>CSHB 2388 would authorize landlords specifically to charge late fees on overdue water bills. Late fees on water bills are not a new concept. The apartment industry charged late fees in the past, but when TCEQ revised its rules several years ago, they were silent on the topic.</p> <p>Landlords commonly are allowed to charge late fees on unpaid utility bills. For example, Public Utility Commission rules allow landlords to charge a late fee of 5 percent on submetered or allocated electricity bills. Landlords have few alternatives when a tenant does not pay a water bill, as the landlord still must pay the water company for all water used. By allowing landlords to charge late fees for water bills, CSHB 2388 would give landlords a tool to encourage tenants to pay those bills on time. TCEQ's existing rules would protect tenants' rights by requiring them to receive notice of the possibility of late fee charges at the time of signing the lease.</p> <p>Although a landlord might evict a tenant for unpaid rent, it would be highly unusual to evict a tenant over a nominal amount such as a monthly water bill or late fee, especially in the current rental market.</p>
OPPONENTS SAY:	CSHB 2388 could lead to landlords evicting their tenants for not paying water bills or late fees. Although a tenant might win a dispute over a water bill and might even succeed in having TCEQ assess a fine against the landlord, the tenant still could be evicted.
OTHER OPPONENTS SAY:	A 5 percent fee would not be sufficient to encourage tenants to pay their water bills on time. Many water bills are less than \$20 a month, and the threat of being charged an additional one-dollar fee would not deter late payment. A 5 percent fee might not even cover the landlord's costs associated with getting the tenant to pay the bill.
NOTES:	The committee substitute would conform the bill to the Texas Legislative Council format.