

BILL ANALYSIS

Senate Research Center
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S.B. 326
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Natural Resources
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DIGEST AND PURPOSE

Currently, there is no legislation regulating the sale of water being transported by pipeline. With certain regions in the state projected to run out of water soon, transporting water from one region or water basin to another is anticipated for some cities and may attract entrepreneurs. The water utilities or municipalities that might possibly be buying water from these business entities do not have any leverage that will enable them to protect the consumer's interest as they negotiate the price of water. As proposed, S.B. 326 gives the Texas Commission on Environmental Quality the authority to regulate the price of water transported at least 50 miles, ensuring that purchases are protected while allowing private businesses to get a fair rate of return on their investment.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 13.552, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 13, Water Code, by adding Subchapter O, as follows:

SUBCHAPTER O. REGULATION OF CERTAIN SALES OF WATER TO BE TRANSPORTED BY PIPELINE

Sec. 13.551. **APPLICABILITY.** (a) Provides that this subchapter applies only to the sale of raw or potable groundwater or surface water if the water, before or after the sale, is to be transported by pipeline 50 miles or more or from one river basin in this state to another river basin in this state.

(b) Provides that this subchapter applies to a sale of water by an individual or a business entity.

Sec. 13.552. **POWER TO ENSURE COMPLIANCE; RATE REGULATION.** Provides that the Texas Commission on Environmental Quality (TCEQ) has all authority and power of the state to ensure that persons who supply or receive water, the sale of which is subject to this subchapter, comply with their obligations under this subchapter. Authorizes TCEQ, for this purpose, to fix and regulate the rates for sales of that water and to adopt rules for determining the classification of customers and services and the applicability of rates.

Sec. 13.553. **JUST AND REASONABLE RATES.** Requires TCEQ to ensure that the rate for water sold under this subchapter is just and reasonable.

Sec. 13.554. **FIXING OVERALL REVENUES.** Requires TCEQ to fix the seller's revenues at a level that will permit the seller a reasonable opportunity to earn a reasonable return on the seller's invested capital used and useful in supplying water to the purchaser over and above the seller's reasonable and necessary operating expenses and that will preserve the financial

integrity of the seller.

Sec. 13.555. FAIR RETURN. Prohibits TCEQ from prescribing any rate for a sale of water under this subchapter that will yield more than a fair return on the invested capital used and useful in supplying water to the purchaser.

Sec. 13.556. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES. (a) Prohibits a person who supplies water, the sale of which is subject to this subchapter, from making or granting any unreasonable preference or advantage to any person within any classification or subject any person within any classification to any unreasonable prejudice or disadvantage.

(b) Prohibits a person who supplies water, the sale of which is subject to this subchapter, from establishing or maintaining any unreasonable differences as to rates for water either as between localities or as between classes of service.

Sec. 13.557. EQUALITY OF RATES AND SERVICES. (a) Prohibits a person who supplies water, the sale of which is subject to this subchapter, from directly or indirectly by any device or in any manner charging, demanding, collecting, or receiving from any person a greater or lesser compensation for any water supplied by the person than that prescribed in the person's schedule of rates as properly applied to the person to whom the water is supplied.

(b) Prohibits a person from knowingly receiving or accepting water from a person for a compensation greater or less than that prescribed in the supplier's schedule of rates as properly applied to the person to whom the water is supplied.

Sec. 13.558. DISCRIMINATION; RESTRICTION ON COMPETITION. (a) Prohibits a person who supplies water, the sale of which is subject to this subchapter, from discriminating against any person who provides water in competition with the person or engaging in any other practice that tends to restrict or impair that competition.

(b) Requires a person who supplies water, the sale of which is subject to this subchapter, by a pipeline owned or operated by the person to receive and transport water delivered to the person by other water suppliers and perform the person's other related duties without discrimination. Prohibits a person who supplies water, the sale of which is subject to this subchapter, by a pipeline owned or operated by the person from discriminating in the transportation of water, the sale of which is subject to this subchapter, among or against other water suppliers with regard to facilities provided, services rendered, or rates charged under the same or similar circumstances or discriminating in the transportation of water produced or purchased by the person directly or indirectly.

(c) Authorizes a person to refuse to transport raw water in a pipeline owned or operated by the person if the pipeline is being used to transport potable water or potable water in a pipeline owned or operated by the person if the pipeline is being used to transport raw water.

Sec. 13.559. CERTIFICATE OF CONVENIENCE AND NECESSITY. (a) Prohibits a person from supplying to another person water, the sale of which is subject to this subchapter, unless the person supplying the water obtains from the commission a certificate that the present or future public convenience and necessity require that the water be supplied.

(b) Requires TCEQ, in determining whether to grant a certificate of public convenience and necessity, to ensure that the person supplying the water possesses the financial, managerial, and technical capability to provide continuous and adequate service.

Sec. 13.560. CONTINUOUS AND ADEQUATE SERVICE. Requires a person that possesses or is required to possess a certificate of public convenience and necessity issued under Section 13.559 to render continuous and adequate service.

Sec. 13.561. APPROVAL OF WATER SUPPLY CONTRACT. Provides that a contract to supply water, the sale of which is subject to this subchapter, is enforceable only if the contract is approved by TCEQ after public notice and hearing.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2003.