

## **BILL ANALYSIS**

C.S.H.B. 2852  
By: Nevárez  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties are concerned that some municipalities charge school districts water or sewer service fees in excess of fees charged to other entities for the same service and that such fees charged a district may be based on the number of district students or employees as opposed to fees based on the volume of water used that are charged to the other entities. The parties emphasize that some districts are left with no choice but to pay those fees at the expense of district students and programs because certain municipalities hold a monopoly on the provision of water or sewer service in the area. C.S.H.B. 2852 seeks to address this issue.

### **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. 2852 amends the Water Code to prohibit a municipally owned utility that provides retail water or sewer utility service to a public school district from charging the district a fee based on the number of district students or employees in addition to the rates the utility charges the district for the service. The bill authorizes a district that is charged such a prohibited fee to appeal the charge by filing a petition with the Public Utility Commission of Texas (PUC). The bill requires the PUC to hear the appeal de novo and places the burden of proof on the municipality charging the fee to establish that the fee complies with the bill's provisions relating to municipal fees for public school districts. The bill requires the PUC to fix the fees to be charged by the municipality in accordance with statutory provisions relating to water rates and services.

C.S.H.B. 2852 sets out temporary provisions set to expire September 1, 2020, to require the PUC, on the petition of a public school district that after September 1, 2009, was charged a fee for retail water or sewer utility service based on the number of district students or employees in addition to the rates charged for the service, to evaluate the fee to determine whether the fee complies with the bill's provisions relating to municipal fees for public school districts. The bill sets out requirements and procedures for the PUC on the determination that the fee does not comply. The bill prohibits a district from submitting such a petition after September 1, 2020.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2852 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. The legislature finds that the imposition of fees for water service that are based on the number of students or employees of a public school district diverts to other purposes money appropriated in accordance with Section 1, Article VII, Texas Constitution, for the education of students. For that reason, the imposition of fees on those bases by a political subdivision violates the Texas Constitution.

SECTION 2. The heading to Section 13.044, Water Code, is amended.

SECTION 3. Subchapter C, Chapter 13, Water Code, is amended by adding Section 13.0441 to read as follows:

Sec. 13.0441. RATES CHARGED BY MUNICIPALITY TO PUBLIC SCHOOL DISTRICTS. (a) This section applies to rates charged by a municipality for water or sewer service to a public school district. (b) Notwithstanding the provisions of a resolution, ordinance, or agreement, a public school district may appeal the rates charged to the district by the municipality by filing a petition with the utility commission.

The utility commission shall hear the appeal de novo, and the municipality shall have the burden of proof to establish that the rates are just and reasonable.

The utility commission shall fix the rates to be charged by the municipality in accordance with this chapter, including Section 13.088, and the municipality may not increase those rates without the approval of the utility commission.

SECTION 4. Subchapter D, Chapter 13, Water Code, is amended by adding Section 13.088 to read as follows:

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Subchapter C, Chapter 13, Water Code, is amended by adding Section 13.0441 to read as follows:

Sec. 13.0441. FEES CHARGED BY MUNICIPALITY TO PUBLIC SCHOOL DISTRICTS. (a) This section applies only to fees charged by a municipality for water or sewer service to a public school district. (b) Notwithstanding the provisions of a resolution, ordinance, or agreement, a public school district charged a fee that violates Section 13.088 may appeal the charge by filing a petition with the utility commission.

The utility commission shall hear the appeal de novo, and the municipality charging the fee has the burden of proof to establish that the fee complies with Section 13.088.

The utility commission shall fix the fees to be charged by the municipality in accordance with this chapter, including Section 13.088.

SECTION 4. Subchapter D, Chapter 13, Water Code, is amended by adding Section 13.088 to read as follows:

Sec. 13.088. MUNICIPAL RATES FOR PUBLIC SCHOOL DISTRICTS.

(a) A municipally owned utility that provides retail water or sewer utility service to a public school district shall charge the district for that service the lowest rates the utility charges commercial businesses or nonprofit organizations that receive retail water or sewer utility service from the utility.

(b) A municipally owned utility that provides retail water or sewer utility service to a public school district may not charge the district:

(1) a fee that the utility does not charge commercial businesses that receive retail water or sewer utility service from the utility; or

(2) a fee based on the number of district students or employees.

SECTION 5. (a) This section applies only to a public school district that, after August 1, 2012, was charged a rate or fee for retail water or sewer utility service based on the number of district students or employees.

(b) Notwithstanding any other law or agreement, on the petition of a public school district, the Public Utility Commission of Texas shall evaluate a rate or fee for retail water or sewer utility service charged by a municipally owned utility to the district after August 1, 2012, to determine whether the rate or fee complies with Chapter 13, Water Code, as amended by this Act.

(c) If the Public Utility Commission of Texas determines under Subsection (b) of this section that the rate or fee does not comply with Chapter 13, Water Code, as amended by this Act, the commission:

(1) shall fix the rate or fee to be charged by the municipally owned utility in accordance with Chapter 13, Water Code, as amended by this Act;

(2) shall establish the original effective date of the rate or fee that does not comply with Chapter 13, Water Code, as amended by this Act, based on information submitted by the

Sec. 13.088. MUNICIPAL FEES FOR PUBLIC SCHOOL DISTRICTS.

No equivalent provision.

A municipally owned utility that provides retail water or sewer utility service to a public school district may not charge the district a fee based on the number of district students or employees in addition to the rates the utility charges the district for the service.

SECTION 5. (a) This section applies only to a public school district that, after September 1, 2009, was charged a fee for retail water or sewer utility service based on the number of district students or employees in addition to the rates charged for the service.

(b) Notwithstanding any other law or agreement, on the petition of a public school district, the Public Utility Commission of Texas shall evaluate a fee for retail water or sewer utility service charged by a municipally owned utility to the district after September 1, 2009, to determine whether the fee complies with Section 13.088, Water Code, as added by this Act.

(c) If the Public Utility Commission of Texas determines under Subsection (b) of this section that the fee does not comply with Section 13.088, Water Code, as added by this Act, the commission:

(1) shall fix or eliminate the fees to be charged by the municipally owned utility in accordance with Section 13.088, Water Code, as added by this Act;

(2) shall establish the original effective date of the fee that does not comply with Section 13.088, Water Code, as added by this Act, based on information submitted by the

municipally owned utility;  
(3) shall by order require the municipally owned utility to refund to the public school district money collected from the ~~rate or~~ fee described by Subdivision (2) of this subsection in excess of the ~~rate or~~ fee fixed under Subdivision (1) of this subsection; and

(4) may allow the public school district to recover from the municipally owned utility any reasonable expenses incurred by the district in the process of submitting a petition under this section.

(d) This section expires and a public school district may not submit a petition under this section after September 1, 2020.

SECTION 6. This Act takes effect 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, 2015.

municipally owned utility;  
(3) by order shall require the municipally owned utility to refund to the public school district money collected from the fee described by Subdivision (2) of this subsection in excess of the fee fixed under Subdivision (1) of this subsection; and

(4) may allow the public school district to recover from the municipally owned utility any reasonable expenses incurred by the district in the process of submitting a petition under this section.

(d) This section expires and a public school district may not submit a petition under this section after September 1, 2020.

SECTION 6. Same as introduced version.