

SUBJECT: Allowing tenants to file overcharged utility service complaint with PUC

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, Price, Workman
0 nays
3 absent — T. King, Lucio, Nevárez

WITNESSES: For — Andres Medrano and Lana Reeve, Realpage, Inc.; Howard Bookstaff and Clay Hicks, Texas Apartment Association; (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; Frank Jackson, Texas Affiliation of Affordable Housing Providers; Felicia Wright, Texas Association of Builders; Laura Matz, Texas Community Association Advocates; DJ Pendleton, Texas Manufactured Housing Association)

Against — Juliana Gonzales, Austin Tenants' Council; Nelson Roach, TTLA; Britton Monts; Martin Weber; (*Registered, but did not testify*: Nate Walker, Texas Low Income Housing Information Service; Victoria Sommerman, Texas Watch; Jason Snell; Andrew Sullo)

On — Tammy Benter, Public Utility Commission

BACKGROUND: Water Code, sec. 13.503 governs submetering rules for individual rental or dwelling units by master meter operators or building owners. The owner or manager of a manufactured home rental community or apartment can impose a service charge of up to 9 percent of submetering costs.

Sec. 13.5031 governs billing systems by manufactured home rental community owners, apartment owners, condominium managers, or others for allocating non-submetered master metered utility service costs. The rental agreement must contain a clear written description of the calculation method for the allocation of services. An owner or manager may not impose additional charges on a tenant in excess of the charges

imposed for utility consumption.

Sec. 13.505 allows a tenant who was overcharged for water utility services to recover three times the amount of overcharge, a civil penalty equal to one month's rent, and attorney's fees and court costs from an owner or manager. An owner or manager is not liable if there is proof the violation was a good faith, unintentional mistake.

DIGEST: CSHB 1964 would allow a person to file a complaint with the Public Utility Commission (PUC) if an apartment owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violated certain utility cost rules. If PUC found that a tenant had been overcharged, the commission would require an owner or condominium manager to repay the tenant the amount overcharged for submetered or non-submetered water or wastewater services.

The bill would create a rebuttable presumption that an owner or manager who had adopted an existing program to submeter or allocate water from a previous owner or manager had not committed an act giving rise to a cause of action.

The bill also would specify that provisions in Water Code, secs. 13.503 and 13.5031 governing submetering and non-submetering rules would not limit the authority of an owner, operator, or manager to charge a fee relating to the management of chilled water, boiler, heating, ventilation, air conditioning, or other building system unrelated to utility costs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY: CSHB 1964 would align the complaint process for tenants bringing action against a multi-use residence for overcharging water utilities with the processes for gas and electric utilities by allowing tenants to file complaints with the Public Utility Commission (PUC). The bill would cut back on the expansion of unnecessary and costly class-action suits for

these cases. Certain online and over-the-phone procedures also would be available.

The bill would hold landlords accountable. PUC could order a landlord to pay refunds to overcharged tenants, and the commission could impose administrative penalties at its discretion. Tenants would retain the ability to go to court to seek further remediation after completing the formal complaint process through PUC.

Concerns that owners or managers could recover their own water utility costs through administrative fees billed to tenants are unfounded. Current law already prohibits the imposition of additional charges in excess of what was charged for utility consumption.

OPPONENTS
SAY:

CSHB 1964 would require tenants to seek remediation through PUC's formal process, wasting valuable time and money. Most tenants do not live in Austin, where PUC is located, and could not easily navigate the cumbersome process without an attorney.

The bill also would result in decreased penalties for apartment owners and condo managers that deliberately overcharged tenants. Tenants could not recover remediation or attorney's fees under the process outlined in the bill, aside from the amount of money overcharged, disincentivizing them from seeking remediation at all.

Further, the bill would create a loophole so that an owner or manager could tack additional "administrative" fees on to a tenant's bill to cover the landlord's water service fees.

NOTES:

A companion bill, SB 873 by Creighton, was approved by the Senate on April 20 and referred to the House Natural Resources Committee on May 8.