

## **BILL ANALYSIS**

C.S.H.B. 2959  
By: Isaac  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that certain small municipalities, such as the City of Hays, that rely on aquifer water may not have the water resources or infrastructure to accommodate new development necessary to accommodate the needs of nearby growth. C.S.H.B. 2959 seeks to address this issue by providing for wholesale water and wastewater service between certain municipalities.

### **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. 2959 amends the Water Code to require a municipally owned utility of a home-rule municipality primarily located in a county with a population of more than one million to provide wholesale water and wastewater service to a general-law municipality with a population of less than 301 located in a county with a population of more than 150,000, in the corporate boundaries or the extraterritorial jurisdiction of the general-law municipality, on the request of, and at the level of service requested by, the general-law municipality if the extraterritorial jurisdiction of the home-rule municipality borders the extraterritorial jurisdiction of the general-law municipality, the general-law municipality possesses a certificate of public convenience and necessity, a regulated aquifer is the sole water supply for the general-law municipality at the time the request is made and while the service is provided, a groundwater conservation district with jurisdiction over the aquifer has determined that the aquifer has limited capacity and experiences frequent droughts, and at least 50 percent of the territory of the general-law municipality, including territory in the municipality's corporate boundaries and extraterritorial jurisdiction, is located in a recharge zone of the aquifer and the groundwater conservation district has determined that the recharge zone is environmentally sensitive.

C.S.H.B. 2959 makes such a general-law municipality that makes such a request and receives wholesale water and wastewater service responsible for paying the general-law municipality's pro rata share of all reasonable design, construction, and related costs and fees associated with constructing new facilities or extending, improving, or expanding existing facilities required for providing the service, not including costs for oversizing the facilities beyond the needs of the general-law municipality; for all costs associated with the design and construction of facilities required for providing the service located in the corporate boundaries or extraterritorial jurisdiction of the general-law municipality; and for design, construction, and related activities for facilities required for providing the service that are to be located in such a home-rule

municipality's corporate boundaries or extraterritorial jurisdiction, in accordance with the design criteria, standards, specifications, and procedures of the municipally owned utility.

C.S.H.B. 2959 prohibits such a home-rule municipality that provides wholesale water and wastewater service through its municipally owned utility from owning, operating, or maintaining facilities used to provide the service located in such a general-law municipality that receives the service. The bill requires the general-law municipality that makes a request to enter into a wholesale water and wastewater service agreement with the municipally owned utility under the utility's standard terms and conditions applicable for wholesale water and wastewater service. The bill requires the wholesale service agreement to be executed before the initiation of preliminary engineering, design, and construction, extensions, improvements, or expansions of infrastructure necessary for wholesale services, and not later than the 180th day after the date the request is submitted. The bill prohibits the home-rule municipality or the municipally owned utility, after execution of the wholesale service agreement, from contesting an application related to water or wastewater submitted to the Texas Commission on Environmental Quality or the Public Utility Commission of Texas (PUC) by the general-law municipality.

C.S.H.B. 2959 authorizes a municipally owned utility that receives a request under the bill's provisions to request that the PUC determine whether the general-law municipality meets the bill's applicable requirements. The bill prohibits the municipally owned utility from recovering through the municipally owned utility's wholesale rates for the general-law municipality design, construction, and related costs and fees associated with constructing new facilities or extending, improving, or expanding existing facilities required for the service that have been paid by the general-law municipality and conveyed to the home-rule municipality for ownership, operation, and maintenance. The bill authorizes the municipally owned utility to recover through the municipally owned utility's wholesale rates for the general-law municipality any costs related to the maintenance of such infrastructure, in addition to the utility's other costs of service as approved by the home-rule municipality.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2959 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. Subchapter D, Chapter 13, Water Code, is amended by adding Section 13.088 to read as follows:

Sec. 13.088. MUNICIPAL WHOLESAL SERVICE IN CERTAIN COUNTIES. (a)

This section applies only to:

(1) a home-rule municipality primarily located in a county with a population of more than one million; and

(2) a general-law municipality with a population of less than 301 located in a county with a population of more than 150,000.

(b) A municipally owned utility of a home-rule municipality shall provide wholesale

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter D, Chapter 13, Water Code, is amended by adding Section 13.088 to read as follows:

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This section applies only to:

(1) a home-rule municipality primarily located in a county with a population of more than one million; and

(2) a general-law municipality with a population of less than 301 located in a county with a population of more than 150,000.

(b) A municipally owned utility of a home-rule municipality shall provide wholesale

water and sewer service to a general-law municipality on the request of the general-law municipality, at the level of service requested by the general-law municipality, if:

(1) the extraterritorial jurisdiction of the home-rule municipality borders the extraterritorial jurisdiction of the general-law municipality;

(2) the general-law municipality possesses a certificate of public convenience and necessity;

(3) an aquifer provides the sole water supply for the general-law municipality;

(4) a groundwater conservation district with jurisdiction over the aquifer has determined that the aquifer has limited capacity and experiences frequent droughts; and

(5) at least 50 percent of the territory of the general-law municipality, including territory in the municipality's corporate boundaries and extraterritorial jurisdiction, is located in a recharge zone of the aquifer described by Subdivision (3) and the groundwater conservation district described by Subdivision (4) has determined that the recharge zone is environmentally sensitive.

(c) A general-law municipality that makes a request under this section is responsible for paying the costs of construction of new facilities or extending existing facilities required for the service.

water and wastewater service to a general-law municipality, in the corporate boundaries or the extraterritorial jurisdiction of the general-law municipality, on the request of the general-law municipality, at the level of service requested by the general-law municipality, if:

(1) the extraterritorial jurisdiction of the home-rule municipality borders the extraterritorial jurisdiction of the general-law municipality;

(2) the general-law municipality possesses a certificate of public convenience and necessity;

(3) a regulated aquifer is the sole water supply for the general-law municipality at the time the request is made and while the service is provided;

(4) a groundwater conservation district with jurisdiction over the aquifer has determined that the aquifer has limited capacity and experiences frequent droughts; and

(5) at least 50 percent of the territory of the general-law municipality, including territory in the municipality's corporate boundaries and extraterritorial jurisdiction, is located in a recharge zone of the aquifer described by Subdivision (3) and the groundwater conservation district described by Subdivision (4) has determined that the recharge zone is environmentally sensitive.

(c) A general-law municipality that makes a request and receives wholesale water and wastewater service under this section is responsible for:

(1) paying the general-law municipality's pro rata share of all reasonable design, construction, and related costs and fees associated with constructing new facilities or extending, improving, or expanding existing facilities required for providing the service, not including costs for oversizing the facilities beyond the needs of the general-law municipality;

(2) all costs associated with the design and construction of facilities required for providing the service located in the corporate boundaries or extraterritorial jurisdiction of the general-law municipality; and

(3) design, construction, and related activities for facilities required for providing the service that are to be located in the home-rule municipality's corporate boundaries or extraterritorial jurisdiction, in accordance with the design criteria,

standards, specifications, and procedures of the municipally owned utility.

(d) A home-rule municipality that provides wholesale water and wastewater service through its municipally owned utility under this section may not own, operate, or maintain facilities used to provide the service located in the general-law municipality that receives the service.

(e) A general-law municipality that makes a request shall enter into a wholesale water and wastewater service agreement with the municipally owned utility under the utility's standard terms and conditions applicable for wholesale water and wastewater service. The wholesale service agreement must be executed:

(1) before the initiation of preliminary engineering, design, and construction, extensions, improvements, or expansions of infrastructure necessary for wholesale services; and

(2) not later than the 180th day after the date the request is submitted.

(f) After execution of the wholesale service agreement, the home-rule municipality or the municipally owned utility may not contest an application related to water or wastewater submitted to the commission or the utility commission by the general-law municipality.

(g) A municipally owned utility that receives a request under this section:

(1) may request that the utility commission determine whether the general-law municipality meets the requirements of Subsection (b);

(2) may not recover through the municipally owned utility's wholesale rates for the general-law municipality design, construction, and related costs and fees associated with constructing new facilities or extending, improving, or expanding existing facilities required for the service that have been paid by the general-law municipality and conveyed to the home-rule municipality for ownership, operation, and maintenance; and

(3) may recover through the municipally owned utility's wholesale rates for the general-law municipality any costs related to the maintenance of infrastructure described in Subdivision (2), in addition to the utility's other costs of service as approved by the home-rule municipality.

(d) A municipally owned utility that receives a request under this section:

(1) may request that the utility commission determine whether the requesting municipality meets the requirements of Subsection (b); and

(2) may not recover through its rates the costs of construction of new facilities or extending existing facilities required for the service.

SECTION 2. 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, 2017.

SECTION 2. Same as introduced version.