

SUBJECT: Authorizing water suppliers to require an easement as a condition of service

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Walker, Crabb, F. Brown, Geren, Howard, Mowery
0 nays
3 absent — Krusee, Truitt, B. Turner

WITNESSES: For — Clay Hodges, Cash Water Supply Corporation; Billy Howe, Texas Farm Bureau; Ken Petersen, Texas Rural Water Association; Brian Sledge, Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C.; Phil Taylor, Stephens County Rural Water Service Corporation
Against — None

BACKGROUND: Water Code, sec. 49.218 grants a water district or water supply corporation (WSC) broad authority to acquire interests in property, including easements.

DIGEST: HB 924 would amend Water Code, sec 49.218 to authorize a water district or WSC to require an applicant for service or a developer seeking service to a new subdivision to grant a permanent recorded easement as a precondition of service. The easement granted by applicants for service would have to provide a reasonable right of access and use. The easement would allow the district or WSC to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary to provide system-wide service for an applicant or to serve a subdivision's anticipated service demands when fully occupied. The district or WSC could not require an applicant to provide an easement for a service line for the sole benefit of another applicant.

HB 924 would take effect September 1, 2001, and would apply to applications for service made with a water district or WSC on or after September 1, 2001.

SUPPORTERS
SAY:

CSHB 924 would save costs for water utilities serving primarily rural and suburban areas and ultimately for their customers as well. Authorizing permanent recorded easements on the private property of customers rather than on public rights-of-way would allow greater ease of access that would enhance service.

As the state's population grows and road and highway construction increases, water utilities increasingly must relocate water or sewer lines located in the public rights-of-way. Without a permanent recorded easement to provide right of access, the costs to water districts and WSCs of relocating these lines can be significant. Some water districts and nonprofit WSCs have spent as much as \$200,000 to move lines. Ultimately, these costs are passed on to customers, creating a special burden on smaller, rural systems, which have fewer customers to bear the expense. If a water district or WSC had a private easement, then the state or county would have to cover the necessary relocation expenses.

It would be in the public interest for fewer water and sewer lines to be in public rights-of-way, which are becoming increasingly crowded with various cables, such as fiber optics. The direct proximity of these lines to water and sewer lines creates problems when crews must wait for the telephone or cable company to help locate their lines. Authorizing water districts and WSCs to create limited-purpose easements where they could locate their lines would facilitate access and allow faster, more-effective response to service and emergency calls.

HB 924 would not involve the "taking" of private property any more than would requiring a customer to pay a meter or a tap fee. The easement would be granted only for purposes limited to providing the service sought by the owner of the property to which the easement would attach. Anyone who does not want water or sewer utility service would not be affected. Many electric utilities already require easements for service. Also, while water districts and WSCs have existing authority to condemn easements, the legal process is expensive and time-consuming.

OPPONENTS
SAY:

Extending broad, intrusive authority for water utilities to establish a permanent recorded easement on private property could adversely affect property values or create potential title problems. CSHB 924 would give water and sewer customers little choice about surrendering part of their property rights in order to obtain service.

NOTES:

The committee substitute would provide that the easement granted to a water district or WSC would be for offering system-wide service, rather than service just to other customers of the water district or the WSC, as in the filed version of the bill. Also, the committee substitute would not allow an easement for a service line for the sole benefit of another applicant.