

## **BILL ANALYSIS**

Senate Research Center

S.B. 1744  
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Natural Resources  
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### **DIGEST AND PURPOSE**

Currently, certain regions or municipalities in the state are projected to run out of water in the future. Transporting water from one region or water basin to another will be a necessity. Pipelines will need to be constructed and operated to transport this water and this could be done by either governmental entities or by individuals and business entities. It is unlikely, however, that it will be economical or prudent for multiple and competing pipelines to be built to transport the same water supply. If these pipelines are built and owned by private individuals or business entities, it is feared these entities as sellers of water could obtain an effective monopoly or other control over a scarce resource. This could result in an advantage and leverage for private sellers of water that would be beyond any public accountability or regulatory control under current law. As proposed, S.B. 1744 allows the Texas Natural Resource Conservation Commission to regulate rates associated with an individual or business entity selling water from a pipeline that transports water at least 50 miles or from one river basin in this state to another. The regulation will balance the public need and access to the transported water and the pipeline with the investment-backed expectations of the individual or business entity and will ensure a fair return to invested capital over and above operating expenses.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission 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 to the sale of raw or potable water by an individual or business entity if the water is to be transported by pipeline at least 50 miles or from one river basin in this state to another river basin in this state.

(b) Provides that this section applies to the sale of surface water and groundwater.

Sec. 13.552. **POWER TO ENSURE COMPLIANCE; RATE REGULATION.** Provides that the Texas Natural Resource Conservation Commission (commission) has all authority and power of the state to ensure that persons who supply water under this subchapter comply with their obligations under this subchapter. Authorizes the commission, for that purpose, to fix and regulate the rates of water suppliers under this subchapter and to adopt rules for determining the classification of customers and services and for determining the applicability of rates.

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

Sec. 13.554. **FIXING OVERALL REVENUES.** Requires the commission, in fixing the rate for water sold under this subchapter, to fix the seller's revenues at a level that will meet certain requirements.

Sec. 13.555. **FAIR RETURN.** Prohibits the commission from prescribing any rate for water sold 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 under 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 under 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.** Prohibits a person who supplies water under 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 schedule of rates of the person applicable to the supply of water by that person, and prohibits a person from knowingly receiving or accepting water from a person for a compensation greater or less than that prescribed in the schedule.

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

(b) Provides that a person who supplies water under this subchapter by a pipeline owned or operated by the person:

(1) is required to receive and transport water delivered to the person by other water suppliers and perform the person's other related duties without discrimination; and

(2) is prohibited from:

(A) discriminating between or against other water suppliers with regard to facilities provided, services rendered, or rates charged under the same or similar circumstances in the transportation of water; or

(B) discriminating in the transportation of water produced or purchased by the person directly or indirectly.

(c) Authorizes a person, notwithstanding the other provisions of this section, to refuse to transport certain water under certain conditions.

Sec.13.559. **CERTIFICATE OF CONVENIENCE AND NECESSITY.** (a) Prohibits a person from supplying water to another person under 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 the commission, 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 to render continuous and adequate service.

Sec. 13.561. APPROVAL OF WATER SUPPLY CONTRACT. Provides that a contract to supply water under this subchapter is enforceable only if the contract is approved by the commission after public notice and hearing.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2001.