

BILL ANALYSIS

Senate Research Center
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S.B. 958
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

River authorities and special districts were created by the legislature for the essential purpose of managing and selling water. Even though they were created as quasi-governmental entities, river authorities and special districts engage in commercial business operations, negotiating and entering into contracts for the sale and delivery of water with public and private sector entities.

Electric generators contract with river authorities and special districts to purchase the water they need to supply critical electric generation facilities throughout Texas. Since the prolonged drought has taken a toll on Texas water supplies, investors and state regulators such as the Electric Reliability Council of Texas have required evidence of firm water supplies with enforceable contracts.

Over the years the courts in Texas have provided river authorities and special districts with immunity from suit, even in contract situations. It is important to note that sovereign immunity was granted to river authorities and special districts in contract disputes by court actions not express legislative authority. Texas is one of the few states that recognize sovereign immunity in a breach of contract context.

S.B. 958 waives sovereign immunity of a special district or river authority in the very limited circumstances when it voluntarily enters into water supply contracts to sell water that is used by the purchaser in connection with the generation of electricity. S.B. 958 provides for the basic remedies available to all other commercial operators in Texas when they enter into freely negotiated contracts.

As proposed, S.B. 958 amends current law relating to the liability of certain special-purpose districts or authorities providing water to a purchaser for the generation of electricity.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 113, as follows:

CHAPTER 113. WATER SUPPLY CONTRACT CLAIM AGAINST LOCAL DISTRICT OR AUTHORITY

Sec. 113.001. DEFINITIONS. Defines "adjudicating a claim" and "local district or authority" in this chapter.

Sec. 113.002. WAIVER OF IMMUNITY TO SUIT FOR CLAIM REGARDING WATER SUPPLY CONTRACT. Provides that a local district or authority that enters into a written contract stating the essential terms under which the local district or authority is to provide water to a purchaser for use in connection with the generation of electricity waives sovereign immunity to suit for the purpose of adjudicating a claim that

the local district or authority breached the contract by not providing water, or access to water, according to the contract's terms.

Sec. 113.003. REMEDIES. Authorizes remedies awarded in a proceeding adjudicating a claim under this chapter, notwithstanding any limitation established under any other provision of law, to include any remedy available at law or in equity for breach of contract.

Sec. 113.004. NO NEW OR ADDITIONAL WATER RIGHTS. Provides that this chapter does not grant any user of water any new or additional rights to water or any new or additional priority to water rights. Provides that this chapter provides only a means to enforce rights conferred by the terms of the contract that is the subject of a dispute under Section 113.002.

SECTION 2. Makes application of the change in law made by this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2013.