

BILL ANALYSIS

Senate Research Center
85R8636 GRM-F

S.B. 873
By: Creighton
Agriculture, Water & Rural Affairs
3/30/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Landlords often bill tenants for water usage to help limit consumption and promote conservation. This process is governed by the Public Utility Commission of Texas (PUC) under Chapter 13, Water Code. Under current law, tenants have extensive protections, including: notification before signing leases, required leak audits, repairs, and installation of water-efficient devices. Landlords may not profit from water bills.

Current law provides that a tenant may pursue a billing dispute at the PUC or in court. Even though a billing miscalculation may be off by just a few dollars on a monthly bill, the penalty structure incentivizes attorneys to bypass the PUC's water billing complaint process to file class action lawsuits against landlords. In recent months, there has been a marked increase in such lawsuits. This results in costly and time-consuming litigation that is ultimately passed on to other tenants.

S.B. 873 addresses this issue by requiring certain water billing complaints to go through the PUC complaint process. It also clarifies other issues related to charging tenants for submetered and nonsubmetered master metered water and wastewater services while maintaining rights and remedies that ultimately protect both landlords and tenants.

Specifically, this bill:

- requires water billing complaints to go through PUC.
- does not change existing consumer protections.
- clarifies that the owner is the person or entity expressly identified as such in a lease agreement.
- clarifies that fees unrelated to the water bill can be charged to residents.
- explicitly allows PUC to order landlords to repay the overcharge and to assess administrative penalties.
- creates a safe harbor for retrofit requirements if an owner takes over a property that had previously been billing for water.

As proposed, S.B. 873 amends current law relating to the authority and liability of owners and managers of apartment houses, manufactured home rental communities, condominiums, and multiple use facilities in charging tenants for submetered and nonsubmetered master metered water and wastewater services.

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 Section 13.501, Water Code, by amending Subdivision (5) and adding Subdivision (9), as follows:

(5) Redefines "owner."

(9) Defines "utility costs" and "utility service costs."

SECTION 2. Amends Section 13.503, Water Code, by adding Subsection (f), to provide that this section does not limit the authority of certain individuals to charge, bill for, or collect rent, an assessment, an administrative fee, or any other amount that is unrelated to utility costs.

SECTION 3. Amends Section 13.5031, Water Code, as follows:

Sec. 13.5031. NONSUBMETERING RULES (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that this section does not limit the authority of certain individuals to charge, bill for, or collect rent, an assessment, an administrative fee, or any other amount that is unrelated to utility costs.

SECTION 4. Amends Section 13.505, Water Code, as follows:

Sec. 13.505. ENFORCEMENT. (a) Defines "overcharge."

(b) Authorizes the person claiming the violation to file a complaint with the Public Utility Commission (PUC) if a certain individual violates a PUC rule regarding utility costs, rather than authorizes the tenant to recover certain amounts from the owner or condominium manager if, in addition to the enforcement provisions contained in Subchapter K (Violations and Enforcement), a certain individual violates a PUC rule regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs.

(c) Creates this subsection from existing text. Authorizes the complaining tenant to recover from the owner or condominium manager in an action brought under this section three times the amount of the overcharge, a civil penalty of \$100, reasonable attorney's fees, and court costs from the owner or condominium manager, rather than three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager, if the owner or condominium manager fails to comply with the PUC order to repay the overcharge. Provides that certain individuals are not liable, rather than not liable for a civil penalty, if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

(d) Requires a tenant to exhaust administrative remedies before the tenant brings an action in district court against certain individuals who violate a requirement of this subchapter or a PUC rule adopted under this subchapter.

SECTION 5. Amends Section 13.506, Water Code, by adding Subsection (d), to provide that there is a rebuttable presumption that an owner of an apartment house or a multiple use facility or a manager of a condominium that adopted an existing program to submeter or allocate water from a previous owner or manager has not committed an act giving rise to a course of action under this section.

SECTION 6. Effective date: upon passage or September 1, 2017.