

SOAH DOCKET NO. 582-08-2863  
TCEQ DOCKET NO. 2008-0093-UCR

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APPEAL OF THE RETAIL WATER  
AND WASTEWATER RATES OF  
THE LOWER COLORADO RIVER  
AUTHORITY

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BEFORE THE TEXAS

COMMISSION ON

ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**WEST TRAVIS COUNTY MUD NOS. 3 AND 5's  
RESPONSE TO THE ADMINISTRATIVE LAW JUDGES'  
REQUEST FOR ANSWERS TO CERTIFIED QUESTIONS**

**TO THE HONORABLE COMMISSIONERS:**

COME NOW Appellants West Travis County Municipal Utility District Nos. 3 and 5 (the "Districts") and file this, their Response to the Administrative Law Judges' ("ALJs") Request for Answers to Certified Questions (the "Request"), and will respectfully show that the Commission should not take up and answer the Certified Questions because (i) Judge Card's ruling on the inapplicability of Section 49.2122 of the Texas Water Code in this retail rate case was just and proper, (ii) the three different rulings in the three different matters pending before the State Office of Administrative Hearings are harmonious and do not create a conflict with either Texas Water Code Sections 49.2122 or 13.043(j), and (iii) under the applicability provision of Texas Water Code Chapter 49, if a conflict exists between Sections 49.2122 and 13.043(j), then Section 13.043(j) must prevail. In support hereof, the Districts show the following:

**I.**

**ORDER NO. 3 PROPER BASED ON THE FACTS OF THIS MATTER**

This pending matter before the State Office of Administrative Hearings involves the appeal of a retail water and wastewater rate, not a customer class dispute. The Board

of Directors of the Lower Colorado River Authority (the "LCRA") approved water and wastewater rate increases for the West Travis County Regional systems in August 2007. Within the statutory timeframe, ratepayers signed and filed petitions for an appeal of the rate increase with the Texas Commission on Environmental Quality (the "TCEQ" or the "Commission").

As the Districts have pointed out, this matter is a dispute over the unjust and unreasonable retail water and wastewater rates that the LCRA adopted. Nothing in the Districts' appeal raises any issue regarding any customer class issues, any disputes between customer classes, any customer class designations by the LCRA, or the different rates that the LCRA established between different customer classes. The Districts do not compare a residential customer's rates to the rates of LCRA's other customer classes, such as commercial or industrial customers. Instead, the Districts appealed the LCRA's retail rates under the ratemaking provisions of the Texas Water Code and the Commission's rules due to the unjust and unreasonable charges included in the LCRA's retail ratemaking for all customers. Under those provisions, both the Legislature and the Commission established that for an appeal of retail rates, the LCRA bears the burden of proof of showing that its rates are just and reasonable.

Both the LCRA and Executive Director ("E.D.") of the TCEQ asserted incorrectly that Section 49.2122 applied to disputes other than those between customer classes, such as the ratepayer challenge to the LCRA's retail water and wastewater rates. Both the E.D. and LCRA argued that the ALJ should expand the scope of applicability for Section 49.2122 beyond the Legislature's intent and require the Districts and the other appellants

to 1) carry the burden of proof and 2) establish that LCRA's action to increase retail water and wastewater rates was arbitrary and capricious.<sup>1</sup> However, both arguments were contrary to intent of the Texas Legislature. Both the E.D. and the LCRA also ignored the Commission's rules and practice in regard to the review of a district's retail rates.

The Districts and the City of Bee Cave asked the Administrative Law Judge to review the legislative history of Section 49.2122, which when reviewed, reveals that the entirety of this statute was intended to apply only to disputes between different customer classes in which a general law district established differing class fees discriminately. The rules of statutory construction specifically provide that legislative history, title, and context may be considered for the statute as a whole rather than in isolated provisions.<sup>2</sup> When construing a statute, regardless of whether ambiguous, a court may consider other matters, including the object sought to be attained, the circumstances under which the statute was enacted, **the legislative history**, and the title or caption.<sup>3</sup> Further, in determining the intent of a statute, **the statute as a whole must be considered** and not its isolated provisions, and no one provision will be given a meaning inconsistent with the other provisions "although it might be susceptible of such a construction if standing alone."<sup>4</sup>

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<sup>1</sup> See LCRA's Initial Briefing on the Applicability of Texas Water Code §49.2122 at 6, Appeal of the Retail Water and Wastewater Rates of the Lower Colorado River Authority, SOAH DOCKET NO. 582-08-286, TCEQ DOCKET NO. 2008-0093-UCR (March 6, 2009)(hereinafter "LCRA INITIAL BRIEF"); E.D.'s Initial Brief at 2, Appeal of the Retail Water and Wastewater Rates of the Lower Colorado River Authority, SOAH DOCKET NO. 582-08-286, TCEQ DOCKET NO. 2008-0093-UCR (March 6, 2009)(hereinafter "E.D.'s INITIAL BRIEF")

<sup>2</sup> *Ken Petroleum Corp. v. Questor Drilling Corp.*, 24 S.W.3d 344, 350 (Tex. 2000); *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985).

<sup>3</sup> See Tex. Gov't Code Ann. § 311.023 (Vernon 2005).

<sup>4</sup> *Morrison*, 699 S.W.2d at 208; *Barr v. Bernhard*, 562 S.W.2d 844, 849 (Tex. 1978).

In 2007, the 80<sup>th</sup> Texas Legislature adopted Section 49.2122 as part of the floor amendments to Senate Bill 3 (“SB 3”), the omnibus water bill. To ascertain the Legislature’s intent in regard to this provision, it is important to look at the source of the language for the provision. The language for this provision is the language from House Bill 2301 of the 80<sup>th</sup> Legislative Session (“HB 2301”), which was authored by State Representative Robert Talton and who was also the author of the SB 3 amendment. Although HB 2301 itself did not pass as a stand-alone bill, the exact language of HB 2301 was enacted as the amendment to SB 3 and was codified as Section 49.2122 of the Water Code. Therefore, the legislative history of HB 2301 must be utilized to clarify and understand the Legislature’s intent in adopting Section 49.2122.

As shown in the attached Bill Analysis for HB 2301, the background and purpose of the bill was to **“allow a district to establish different fees among classes of customers based on any factors the district considers appropriate.”**<sup>5</sup> Additionally, HB 2301 was captioned as “relating to the authority of certain special districts to establish differences in rates between customer classes.”<sup>6</sup> The intent of the Legislature in enacting this section was to allow districts to establish classes of customers and to charge such classes different rates, based on factors the district considers appropriate.

In his “talking points,” Representative Talton stated that the language in Section 49.2122 **“does not allow for MUD’s to raise rates arbitrarily** by requiring appropriate reasoning to be employed **in restructuring rates between customer classes.”**<sup>7</sup>

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<sup>5</sup> House Comm. on Natural Resources, Bill Analysis, Tex. H.B. 2301, 80<sup>th</sup> Leg., R.S. (2007), attached as Exhibit “A.”

<sup>6</sup> Tex. H.B. 2301, 80<sup>th</sup> Leg., R.S. (2007), attached as Exhibit “B.”

<sup>7</sup> See TALKING POINTS, HB 2301, by Talton (emphasis added), attached as Exhibit “C.”

Representative Talton intended for Section 49.2122 to simply authorize a general law water district to create customer classes for billing rates and for those customer classes to show the district acted arbitrarily before the customers could challenge the differences in rates between the classes.

Now, if you examine Section 49.2122, subsection (a) states that a “district may establish different charges, fees, rentals, or deposits **among classes of customers** that are based on any factor the district considers appropriate. . . .”<sup>8</sup> The remainder of subsection (a) lists the different types of customer classes and the different costs and revenues that the district may differentiate between customer classes.<sup>9</sup> Nothing in subsection (a) is inconsistent with the Legislature’s intent.

Subsection (b) then states that for establishing the different charges, fees, rentals, and deposits, the district is presumed to have weighed and considered the appropriate factors, barring a showing that the district acted arbitrarily and capriciously. In fact, the language in subsection (b) is nearly identical to Representative Talton’s talking points. Subsection (b) is merely describing the charges, fees, rentals, and deposits discussed in subsection (a). However, if the Commission was to take subsection (b) out of context, ignoring the remainder of Section 49.2122, and expand the scope of subsection (b) to the universe of all rate cases, including retail rate cases and even electrical rate cases before the Texas Public Utility Commission, then the Commission would render other portions of the Water Code superfluous, including Section 13.043.

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<sup>8</sup> Tex. Water Code Ann. §49.2122 (a) (Vernon 2008)(emphasis added).

<sup>9</sup> *Id.*

When the entire statute is read to be internally consistent, both subsections are referring to the same assessments and the consideration of the same factors, i.e., those factors used to establish customer classes and variable rates between classes. The mere absence of the phrase “customer classes” in subsection (b) does not mean that this subsection should be isolated and then broadly applied to all rate reviews that do not involve disputes on customer classifications or allocations of cost among customer classifications. The similarity in language and intent of the statute as a whole clearly indicates that subsection (b), in harmony with the entirety of Section 49.2122, relates only to customer class designations and to subsequently different rates for the classes.

When Section 49.2122 is read as a whole, subsection (b) relates back to the decision of a district in developing different charges between different classes. Therefore subsection (b) is only intended to presume the appropriateness of the different charges, fees, rentals, or deposits established between each customer class by a district, not the justice and reasonableness of the costs and charges used to develop retail water and wastewater rates.

Furthermore, Section 291.1 of the Commission’s rules declares that Chapter 291 “is intended to establish a comprehensive regulatory system under Texas Water Code Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the **retail public utilities**. . . .”<sup>10</sup> The Commission’s rules define a retail public utility to include districts such as the LCRA.<sup>11</sup> The Commission goes on to state that Chapter 291 “shall also govern the procedure for the institution, conduct and

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<sup>10</sup> 30 Tex. Admin. Code § 291.1 (Title 30 of the Texas Administrative Code is hereinafter referred to as the “Commission’s Rules”)(emphasis added).

<sup>11</sup> Id. at § 291.3 (40).

determination of **all water and sewer rate causes and proceedings before the commission.**<sup>12</sup> Finally, Section 291.12 of the Commission's rules states the following:

**§ 291.12. Burden of Proof.**

In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.<sup>13</sup>

So, the LCRA, as the retail service provider, has the burden of proof to establish whether its rates are just and reasonable. This language is almost identical to the language that the Legislature adopted for an appeal of retail rates:

**(c) In any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.**<sup>14</sup>

Therefore, in any proceeding involving any proposed change in retail rates before the Commission, the LCRA has the burden of proof.

In Order No. 3, Judge Card agreed with the Districts, ruling that Section 49.2122(b) "does not require Appellants to prove that LCRA acted arbitrarily and capriciously in establishing the rates that are the subject of this appeal."<sup>15</sup> Regarding Section 49.2122(b), Judge Card noted the following:

. . . it exists in the context of a section that pertains to the establishment of customer classes. Its reference to "charges, fees, rentals and deposits" is

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<sup>12</sup> *Id.* at § 291.1(emphasis added).

<sup>13</sup> *Id.* at § 291.12.

<sup>14</sup> Tex. Water Code Ann. §13.184 (c)(emphasis added).

<sup>15</sup> See Order No. 3 at 3, Appeal of the Retail Water and Wastewater Rates of the Lower Colorado River Authority, SOAH DOCKET NO. 582-08-286, TCEQ DOCKET NO. 2008-0093-UCR (March 26, 2009)(hereinafter "Order No. 3")

identical to the language in subsection (a) [of Section 49.2122], which explicitly governs differences among customer classes. . . . The legislative history, set out in Appellants' briefs, supports the narrower interpretation they espouse.<sup>16</sup>

He then concluded that the LCRA, just as any other utility in a rate appeal before the Commission, must bear the burden of proof that its rates are just and reasonable.<sup>17</sup>

Judge Card's ruling on Section 49.2122 recognized that the dispute at hand is not a customer class dispute, but is merely a typical rate dispute between a retail public utility provider and its ratepaying customers. Judge Card's ruling did not create any conflict between the Commission's rules and Sections 13.043 or 49.2122, as a conflict never existed.

Therefore, the Districts respectfully request that the Commission deny the ALJ's Request for Answers to Certified Questions.

**II.**  
**NO CONFLICT EXISTS BETWEEN THE THREE RULINGS IN THE THREE SEPARATE MATTERS BEFORE SOAH**

As noted above, this matter involves a retail rate dispute between ratepayers and a retail public utility. The second matter pending before SOAH involves West Travis County MUD No. 3's ("MUD 3's") petition regarding **raw** water rates that the LCRA charges as part of a contract dispute over the cost of diverted water, and it is not a dispute over the rates charged for retail water and wastewater service. The third matter pending before SOAH is a customer class dispute between one customer class, apartment owner TCR Highland Meadow Limited Partnership ("TCR"), and a municipal utility district,

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<sup>16</sup> Order No. 3, at 2-3.

<sup>17</sup> *Id.* at 3.

Clear Brook City MUD (“CBCMUD”). However, based upon the applicable law and the facts of each of these matters, each respective Judge’s decision is compatible with the other and fails to create any conflict, perceived or otherwise.

**A. West Travis County MUD No. 3 vs. LCRA**

In the second matter, MUD 3 filed that petition under the Commission’s General Powers and Duties Relating to Water Rights found in Chapter 12 of the Water Code, not the Water Rates and Services provisions of Chapter 13. More specifically, MUD 3 appealed under Section 12.013, which allows the Commission to review and fix rates for water rights using “any reasonable basis for fixing rates as may be determined by the commission to be appropriate under the circumstances of the case being reviewed.”

As Judge Kerrie Jo Qualtrough accurately pointed out in her ruling, this second matter is neither a retail rate case nor a matter involving the resale of water to third parties. Moreover, as Judge Qualtrough pointed out, Section 291.12 of the Commission’s rules place the burden of proof squarely upon the moving party if the pending matter is anything but a retail rate case.<sup>18</sup> Thus in this second matter, Section 49.2122 is consistent with Section 291.12, and Judge Qualtrough’s ruling on which party has the burden of proof does not create a conflict between Section 291.12 and Section 49.2122. Regardless of which provision is used to make the ruling, MUD 3 clearly has the burden of proof, and sending the matter to the Commission as part of a Certified Question does not change that fact. Furthermore, Judge Qualtrough’s ruling does not create any confusion or

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<sup>18</sup> See 30 TEX. ADMIN. CODE § 291.12.

conflict between her ruling in that pending water right dispute and Judge Card's ruling on the applicability of Section 49.2122 in this retail rate case.

The E.D.'s claim that the two rulings create a conflict and confusion defies logic. Judge Qualtrough ruled that due to the second matter being a dispute other than a retail rate case, MUD 3 has the burden of proof. The pending rate appeal between the Districts and the LCRA is a retail rate case, so Judge Card's ruling that LCRA bears the burden of proof is consistent with Section 291.12 of the Commission's rules. Moreover, as the Legislature clearly intended Section 49.2122 to apply to customer class disputes, Judge Card's ruling in this retail rate case is consistent with 49.2122 as well.

**B. TCR Highland Meadow Limited Partnership v. Clear Brook City MUD**

As discussed previously, in the third matter pending before SOAH, the owner of an apartment complex, TCR, appealed the rates for sewer and water service charged by Clear Brook City Municipal Utility District because CBCMUD established different charges, fees, rentals, or deposits between different **classes of customers**. Specifically, CBCMUD established a different water and wastewater rate for apartment complexes than the water and wastewater rates charged to other residential customers. In his Order No. 6, Judge William G. Newchurch applied the presumption in Section 49.2122 in declaring that CBCMUD had weighed and applied all appropriate factors in setting different rates between different customer classes, thus placing the burden of proof on TCR to show that CBCMUD acted arbitrarily and capriciously in setting different

charges for different classes of customers.<sup>19</sup>

The distinguishable facts of that customer class case, as well as the proper interpretation of Section 49.2122, clearly show that Section 49.2122 does not apply to an appeal of the retail water and wastewater rates such as the Districts' retail rate appeal. In fact, Section 49.2122 was specifically drafted and passed in response to the CBCMUD customer class case. When adopted, the language of Section 49.2122 was further explained as allowing municipal utility districts "to recoup revenue from classes of customers which utilize disproportionate levels of services, by balancing the charges between customer classes to reflect the level of use equitably."<sup>20</sup>

Again, the E.D.'s claim of conflict and confusion defies logic. Judge Newchurch ruled that due to the third matter being a customer class dispute over the district's discriminatory charges to a class of customers, Section 49.2122 applied to the dispute, forcing TCR to show that CBCMUD acted without a rationale basis (i.e., arbitrarily or capriciously) in charging apartment complexes a different rate for the same amount of service CBCMUD charges other residential customers. The pending rate appeal between the Districts and the LCRA is a retail rate case, so Judge Card's ruling that LCRA bears the burden of proof does not conflict with Judge Newchurch's ruling regarding the customer class dispute. Moreover, as Section 49.2122 applies to customer class disputes only, Judge Card's ruling is consistent with that Section as well.

Therefore, the Districts respectfully request the Commission to deny the ALJ's Request for Answers to Certified Questions.

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<sup>19</sup> *Petition of Ratepayers Appealing Rates Established by Clear Brook City Municipal Utility District*, SOAH Docket No. 582-08-1700, Order No. 6 at 7 (Oct. 22, 2008).

<sup>20</sup> See TALKING POINTS, HB 2301, by Talton (emphasis added), attached as Exhibit "C."

**III.**  
**ALJs' QUESTIONS ARE MOOT UNDER WATER CODE SECTION 49.002**

Regarding the applicability of the provisions found in Chapter 49, Section 49.002 states the following:

Sec. 49.002. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies to all general and special law districts *to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code* or any Act creating or affecting a special law district. In the event of such conflict, the specific provisions in such other chapter or Act shall control.

(b) This chapter does not apply to a district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that this chapter applies to that district.<sup>21</sup>

The LCRA and E.D.'s interpretation of Subsection 49.2122(b) would cause a direct conflict with Section 13.043(j); thus, Section 49.002 would render Subsection 49.2122 inapplicable to this matter, and, thus, rendering the ALJ's questions moot.

The statutory duty that the Legislature imposed upon the Commission under Section 13.043(j) is a direct conflict with the presumption provisions of Section 49.2122. Section 13.043(j) states the following.

In an appeal under this section, the *commission shall ensure that every rate* made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly *shall be just and reasonable*. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in the application to each class of customers. . . .<sup>22</sup>

The Commission cannot ensure that *ever rate is just and reasonable* while at the same time presuming that a district action's in setting a rate are proper without a showing that

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<sup>21</sup> Tex. Water Code § 49.002 (Vernon 2008)(emphasis added).

<sup>22</sup> Tex. Water Code Ann. § 13.043 (j) (Vernon 2008)(emphasis added).

the district's action was arbitrary or capricious. By posing their questions, the ALJs assume a conflict exists between Sections 49.2122(b) and 13.043(j). If this conflict does exist, then Subsection 49.2122(b) is inapplicable to a retail rate case.

If, as the LCRA and the E.D. argue, Subsection 49.2122(b) creates a presumption that retail rates, not just class rates, are properly established absent a showing that the district set the rates arbitrarily or capriciously, then Subsection 49.2122(b) is plainly in conflict with the Legislature's directive to the Commission to ensure every rate is just and reasonable. Moreover, the LCRA and E.D.'s proposed interpretation of Section 49.2122 would require a total disregard of the very specific language in Subsection 49.2122(a), which asserts that "a district may establish different charges, fees, rentals, or deposits among **classes of customers** that are based on any factor the district considers appropriate."<sup>23</sup> Subsection (b) discusses these very same "charges, fees, rentals, or deposits" as well, and these charges, fees, rentals, or deposits are described as the same factors that a district is "presumed to have weighed and considered as appropriate" in subsection (b).<sup>24</sup>

Thus, for Section 49.2122 to be applicable and not in conflict with Section 13.043(j), then the Districts' argument that subsection (b) applies to customer class disputes only must be correct. Section 49.2122 cannot apply to other rate disputes such as a retail rate case. If the language in Subsection 49.2122(b) is interpreted to include all rate disputes beyond the original customer class disputes discussed in subsection (a), then

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<sup>23</sup> Tex. Water Code Ann. § 49.2122 (a) (Vernon 2008)(emphasis added).

<sup>24</sup> *Id.* §49.2122 (b)(Vernon 2008).

subsection 49.2122(b) is in conflict with Section 13.043(j) and, therefore, not applicable to this retail rate case.

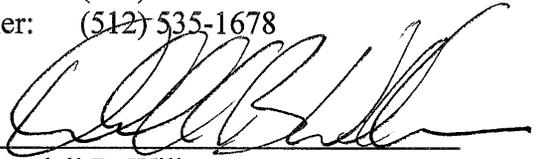
Therefore, the Districts respectfully request the Commission to deny the ALJ's Request for Answers to Certified Questions.

**IV.**  
**CONCLUSION**

For all of the reasons provided above, the Commission should deny the ALJ's Request for Answers to Certified Questions.

Respectfully submitted,

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By: 

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**ATTORNEY FOR WEST TRAVIS  
COUNTY MUD NOS. 3 and 5**

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned sent a true and correct copy of the foregoing Response to the ALJs' Request for Answers to Certified Questions in accordance with the applicable agency rules, as noted below, on this 6<sup>th</sup> day of May 2009 to the following parties:

The Honorable Henry D. Card, William G. Newchurch, and Kerrie J. Qualtrough,  
Administrative Law Judges

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Randall B. Wilburn

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 MAY - 6 PM 3:13  
CHIEF CLERKS OFFICE

**BILL ANALYSIS**

H.B. 2301  
By: Talton  
Natural Resources  
Committee Report (Unamended)

**BACKGROUND AND PURPOSE**

Currently, the water rate structure is unfairly different for apartment complexes versus single family residences. The fair establishment of water rates ensures that all of the district's customers pay an equitable share of the expenses for the services provided by the district.

HB 2301 would allow a district to establish different fees among classes of customers based on any factors the district considers appropriate.

**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**

SECTION 1. Subchapter H, Chapter 49, Water Code is amended by adding Section 49.2122:

- a) Adds that a district may establish different charges, fees, rentals, or deposits among classes of customers that are based on any factor the district considers appropriate.
- b) Presumes that a district has weighed and considered appropriate factors and has properly established charges, fees, rentals, and deposits absent a showing that the district acted arbitrarily and capriciously.

**EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

By: Talton

H.B. No. 2301

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the authority of certain special districts to establish  
3 differences in rates between customer classes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter H, Chapter 49, Water Code, is amended  
6 by adding Section 49.2122 to read as follows:

7 Sec. 49.2122. ESTABLISHMENT OF CUSTOMER CLASSES. (a)

8 Notwithstanding any other law, a district may establish different  
9 charges, fees, rentals, or deposits among classes of customers that  
10 are based on any factor the district considers appropriate,  
11 including:

12 (1) the similarity of the type of customer to other  
13 customers in the class, including:

14 (A) residential;

15 (B) commercial;

16 (C) industrial;

17 (D) apartment;

18 (E) rental housing;

19 (F) irrigation;

20 (G) homeowner associations;

21 (H) builder;

22 (I) out-of-district;

23 (J) nonprofit organization; and

24 (K) any other type of customer as determined by

1 the district;  
2 (2) the type of services provided to the customer  
3 class;  
4 (3) the cost of facilities, operations, and  
5 administrative services to provide service to a particular class of  
6 customer, including additional costs to the district for security,  
7 recreational facilities, or fire protection paid from other  
8 revenues; and  
9 (4) the total revenues, including ad valorem tax  
10 revenues and connection fees, received by the district from a class  
11 of customers relative to the cost of service to the class of  
12 customers.  
13 (b) A district is presumed to have weighed and considered  
14 appropriate factors and to have properly established charges, fees,  
15 rentals, and deposits absent a showing that the district acted  
16 arbitrarily and capriciously.  
17 SECTION 2. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2007.

**TALKING POINTS  
HB 2301 by TALTON**

Mr. Chairman, members of the Committee, there is a need for the clarification of the intent of law regulating Municipal Utility Districts in the State of Texas' means establishing rates charged to garner revenue as current law is ambiguous as to how MUD's may go about generating sufficient revenue to operate.

In the case of the Clear Brook City Municipal Utility District, there was a shortage of funds available for the MUD to provide its services. The MUD sought to alter the rate charges to apartment complexes for water. The MUD deemed this a fair way to adequately meet its revenue needs, but also evenly distribute the burden, as home owners bare a heavy burden for water rates, while utilizing substantially lower amounts of other services provided by the MUD.

However, the Clear Brook City Municipal Utility District's rate change was *alleged to be* illegal under a law suit filed by a resident in the MUD. The 334th Judicial District Court of Harris County, Texas *disallowed the rate* under its interpretation of current law because the change was based upon charging certain classes of customer differing rates. Currently, Section 49.212 of the Water Code *allows* MUD's to generate revenue through rate charges for its services. *It is a general practice for districts to differentiate between classes of service, and Clear Brook believes that it would have ultimately prevailed upon appeal.* However, the issue at hand was whether it is legal to charge differing groups of customers different rates based upon usage.

HB 2301 seeks to clarify Section 49.212 by *codifying current law governing the ability of MUD's to charge differing rates to different classes of customers.* This allows for MUD's to recoup revenue from classes of customers which utilize disproportionate levels of services, by balancing the charges between customer classes to reflect the level of use equitably.

Important in establishing equitable distribution of rates and taxes to customers, HB 2301 does not allow for MUD's to raise rates arbitrarily

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**by requiring appropriate reasoning to be employed in restructuring rates between customer classes.**