

By: Larson

H.B. No. 4147

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of rates for water sales and the
3 provision of wholesale water or sewer service.

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

5 SECTION 1. Section 11.041(a), Water Code, is amended to
6 read as follows:

7 (a) Any person entitled to receive or use water from any
8 canal, ditch, flume, lateral, dam, reservoir, or lake or from any
9 conserved or stored supply may present to the commission a written
10 petition showing:

11 (1) that the person ~~[he]~~ is entitled to receive or use
12 the water;

13 (2) that the person ~~[he]~~ is willing and able to pay the
14 price demanded for the water ~~[a just and reasonable price for the~~
15 ~~water]~~;

16 (3) that the party owning or controlling the water
17 supply has water not contracted to others and available for the
18 petitioner's use; and

19 (4) that the party owning or controlling the water
20 supply fails or refuses to supply the available water to the
21 petitioner ~~[, or that the price or rental demanded for the available~~
22 ~~water is not reasonable and just or is discriminatory]~~.

23 SECTION 2. Section 13.043(h), Water Code, is amended to
24 read as follows:

1 (h) The utility commission may, on a motion by the utility
2 commission or by the appellant under Subsection (a) or [r] (b) [~~r~~
3 ~~(f)~~], establish interim rates to be in effect until a final decision
4 is made.

5 SECTION 3. Subtitle B, Title 2, Water Code, is amended by
6 adding Chapter 14 to read as follows:

7 CHAPTER 14. REGULATION OF RATES FOR RAW WATER SALES AND WHOLESALE
8 WATER OR SEWER SERVICE

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 14.0101. PURPOSE. The purpose of this chapter is to
11 establish policies and procedures for regulating rates for raw
12 water sales and wholesale water and sewer service.

13 Sec. 14.0102. DEFINITIONS. In this chapter:

14 (1) "Commission" means the Texas Commission on
15 Environmental Quality.

16 (2) "Debt service and public security requirements"
17 means revenue or income sufficient to:

18 (A) meet all debt service requirements on a
19 public security;

20 (B) pay or repay any amounts required to be
21 deposited in any special or reserve fund required to be established
22 and maintained by the public security authorization for the public
23 security; and

24 (C) achieve and maintain compliance with all
25 revenue and income requirements set forth in the public security
26 authorization for the public security.

27 (3) "Facilities" means all the plant and equipment of

1 a seller required to accomplish a sale and purchase of water or the
2 provision of wholesale water or sewer service, including all
3 tangible and intangible real and personal property without
4 limitation, and any and all means and instrumentalities in any
5 manner owned, operated, leased, licensed, used, controlled,
6 furnished, or supplied for, by, or in connection with the business
7 of the seller.

8 (4) "Person" includes natural persons, partnerships
9 of two or more persons having a joint or common interest, mutual or
10 cooperative associations, water supply or sewer service
11 corporations, and corporations.

12 (5) "Political subdivision" includes a river
13 authority.

14 (6) "Purchaser" means a person who pays compensation
15 to another person for supply of raw water or a retail public utility
16 that pays compensation to a political subdivision or other retail
17 public utility for wholesale water or sewer service.

18 (7) "Public security" means an instrument, including a
19 bond, certificate, note, or other type of obligation issued or
20 authorized to be issued by a political subdivision under a statute,
21 a municipal home-rule charter, or the constitution of this state,
22 for the purpose or purposes of financing or refinancing the
23 acquisition, construction, or improvement of facilities and
24 payable wholly or partly from revenue or income derived from the
25 operation of the facilities.

26 (8) "Public security authorization" means a
27 resolution, order, or ordinance that is approved or adopted, or any

1 other action taken in a proceeding, by the governing body of a
2 political subdivision in authorizing the issuance of a public
3 security.

4 (9) "Rate" means the cost fixed, charged, or paid in
5 connection with the sale and purchase of water or the provision of
6 wholesale water or sewer service.

7 (10) "Raw water" means untreated surface water or
8 groundwater.

9 (11) "Retail public utility" means any person,
10 corporation, public utility, water supply or sewer service
11 corporation, municipality, political subdivision, or agency
12 operating, maintaining, or controlling in this state facilities for
13 providing potable water service or sewer service, or both, for
14 compensation.

15 (12) "Retail water or sewer utility service" means
16 potable water service or sewer service, or both, provided by a
17 retail public utility to the ultimate consumer for compensation.

18 (13) "Sale and purchase of water" means the provision
19 of raw water for compensation.

20 (14) "Seller" means a retail public utility or
21 political subdivision that sells raw water or provides wholesale
22 water or sewer service.

23 (15) "Utility commission" means the Public Utility
24 Commission of Texas.

25 (16) "Weather emergencies" means severe local storms,
26 winter storms, drought, flooding, coastal hazards including
27 tropical cyclones, and non-precipitation hazards, including

1 extreme hot or cold conditions and high winds.

2 (17) "Wholesale water or sewer service" means potable
3 water or sewer service, or both, provided for compensation to a
4 person or political subdivision who is not the ultimate consumer of
5 the service.

6 (18) "Written contract" means a written agreement
7 between a purchaser and seller relating to the sale and purchase of
8 water or to the provision of wholesale water or sewer service that
9 is sufficiently definite in its material terms to ascertain the
10 parties' intent. The term includes the following:

11 (A) a contract that obligates the seller to make
12 available and the purchaser to pay for a minimum volume of raw or
13 potable water, or sewer treatment capacity, regardless of the
14 amount actually delivered or used by the purchaser;

15 (B) a contract for the sale and purchase of water
16 or for wholesale water or sewer service in which the exact amount of
17 raw water purchased and sold or the volume of wholesale water or
18 sewer service required by the purchaser is not specifically
19 determined and under which the seller guarantees to meet the needs
20 of the purchaser;

21 (C) a contract that provides for the price to be
22 initially fixed and adjusted by the seller over time;

23 (D) a contract that extends for any period for
24 which the parties agree or provide that such contracts will
25 continue in effect until bonds specified by the contract and any
26 refunding bonds issued to pay those bonds are paid;

27 (E) a contract that provides that the purchaser

1 may not obtain water or services from a source other than the seller
2 except as provided by the written contract; and

3 (F) a contract entered into under Section
4 791.026, Government Code.

5 Sec. 14.0103. APPLICABILITY. This chapter applies to the
6 rates fixed, charged, or paid for the sale and purchase of water or
7 the provision of wholesale water or sewer service that are subject
8 to the jurisdiction of the utility commission under any provision
9 of Chapters 11 and 12. This chapter does not apply to rates,
10 agreements, or contracts subject to regulation under Subchapter F,
11 Chapter 13, or rates for retail water or sewer utility service
12 charged under a tariff, a rate order, or ordinance.

13 Sec. 14.0104. APPLICABILITY OF ADMINISTRATIVE PROCEDURE
14 ACT. Chapter 2001, Government Code, applies to all proceedings
15 under this chapter except to the extent inconsistent with this
16 chapter.

17 SUBCHAPTER B. JURISDICTION

18 Sec. 14.0151. RATES. (a) The utility commission shall fix
19 reasonable rates for the sale and purchase of water for any purpose
20 mentioned in Chapter 11 or 12 and for wholesale water and sewer
21 service.

22 (b) The utility commission in reviewing and fixing
23 reasonable rates for the sale and purchase of water or for wholesale
24 water or sewer service under this chapter may use any reasonable
25 basis for fixing rates as may be determined by the utility
26 commission to be appropriate under the circumstances of the case
27 being reviewed. The utility commission may not fix a rate which a

1 political subdivision may charge that is less than the amount
2 required to meet:

3 (1) the debt service and public security requirements
4 of that political subdivision or that impairs the political
5 subdivision's financial integrity; and

6 (2) the costs of preparedness for weather emergencies.

7 (c) The utility commission's jurisdiction under this
8 section relating to a municipality is limited to water furnished by
9 the municipality to another political subdivision on a wholesale
10 basis.

11 (d) In a proceeding under Section 14.0204, the utility
12 commission may establish interim rates and compel continuing
13 service during the pendency of a rate proceeding under this
14 chapter. The utility commission may not fix an interim rate for a
15 political subdivision which is less than the amount required to
16 meet:

17 (1) the debt service and public security requirements
18 of that political subdivision or that impairs the political
19 subdivision's financial integrity; and

20 (2) the costs of preparedness for weather emergencies.

21 (e) The utility commission may order a refund or assess
22 additional charges from the date a petition for rate review is
23 received by the utility commission of the difference between the
24 rate actually charged and the rate fixed by the utility commission,
25 plus interest at the statutory rate.

26 Sec. 14.0152. REGULATION AND REVIEW OF RATES. (a) The
27 utility commission shall review rates charged for the sale and

1 purchase of water or the provision of wholesale water or sewer
2 service under this chapter.

3 (b) The utility commission may consult with the commission
4 as necessary in carrying out its duties related to the regulation of
5 the sale and purchase of water or the provision of wholesale water
6 or sewer service.

7 Sec. 14.0153. APPELLATE JURISDICTION. (a) A retail public
8 utility that receives wholesale water or sewer service from another
9 retail public utility or political subdivision of the state,
10 including an affected county, may appeal to the utility commission
11 a rate change.

12 (b) An appeal of a rate change under this section must be
13 initiated not later than the 91st day after the date of notice of
14 the rate change by the filing of a petition by the retail public
15 utility.

16 SUBCHAPTER C. PROCEEDINGS BEFORE UTILITY COMMISSION ON RATES SET
17 UNDER WRITTEN CONTRACT

18 Sec. 14.0201. GENERAL POLICY. (a) This subchapter is
19 adopted to protect the sanctity of written contracts governed by
20 this chapter.

21 (b) It is the policy of the state that sales under written
22 contracts governed by this chapter shall be regulated in a fashion
23 that accords deference to a contract's terms unless a contract
24 seriously harms the public interest.

25 (c) The legislature finds that the use of cost of service
26 evidence to determine whether a rate seriously harms the public
27 interest does not give sufficient deference to contractual

1 agreements.

2 Sec. 14.0202. PRESUMPTION OF REASONABLENESS.

3 Notwithstanding any other provision of law, written contracts, and
4 their requirements regarding the rates paid, including
5 cost-allocation terms, shall be presumed to be just and reasonable
6 and without discrimination, unless the utility commission finds,
7 after hearing, that public necessity or extraordinary
8 circumstances require the rate to be set aside as seriously harming
9 the public interest. A rate may seriously harm the public interest
10 if the rate:

11 (1) significantly impairs the ability of the seller or
12 purchaser to continue its service;

13 (2) casts on other consumers an excessive burden;

14 (3) constitutes an abuse of monopoly power; or

15 (4) is unduly discriminatory.

16 Sec. 14.0203. LIMITATION ON CONSIDERATION OF COST OF
17 SERVICE. (a) The public interest does not require that rates
18 collected from a purchaser under a written contract equal the
19 seller's cost of providing service to the purchaser.

20 (b) The utility commission may not determine whether a rate
21 subject to the provisions of this subchapter seriously harms the
22 public interest based on an analysis of the seller's cost of
23 service. Cost-of-service evidence is not relevant to determine
24 whether a rate seriously harms the public interest in a proceeding
25 under this section.

26 Sec. 14.0204. PROCEDURE TO CHALLENGE REASONABLENESS. (a)
27 In any proceeding in which a rate charged under a written contract

1 is challenged, the utility commission must determine that the rate
2 seriously harms the public interest before holding a hearing on or
3 otherwise determining or prescribing just and reasonable rates. A
4 finding by the commission that the rate charged under a written
5 contract harms the public interest is final for purposes of appeal
6 in accordance with Section 2001.144, Government Code.

7 (b) A party adversely affected by a determination of the
8 utility commission that a rate charged under a written contract
9 seriously harms the public interest may seek judicial review of the
10 utility commission's determination before any utility commission
11 proceeding to determine or prescribe just and reasonable rates.

12 (c) Appeals under Subsection (b) shall be governed by the
13 procedures specified by Chapter 2001, Government Code, including
14 the requirement that a timely motion for rehearing is a
15 prerequisite to an appeal. Judicial review of an agency
16 determination regarding whether a rate seriously harms the public
17 interest shall be by trial de novo.

18 (d) The utility commission shall abate proceedings in the
19 event of an appeal under Subsection (b) until the entry of a final
20 judicial determination that a rate that is charged under a written
21 contract harms the public interest.

22 (e) After a final judicial determination that affirms a
23 determination by the utility commission that a rate charged under a
24 written contract seriously harms the public interest under
25 Subsection (b), or if no judicial review under Subsection (b) is
26 sought, the utility commission shall, before holding a hearing on,
27 or otherwise determining or prescribing a just and reasonable rate,

1 provide the contracting parties at least 60 days to amend the
2 contract. If the parties amend their contract, no challenge of the
3 contract may be brought before the utility commission by the
4 parties for five years from the effective date of the amended
5 contract.

6 (f) In a proceeding under this chapter, if the seller and
7 purchaser do not agree that the protested rate is charged under a
8 written contract, or if the purchaser alleges that the seller
9 failed to comply with any terms of a written contract, the utility
10 commission shall abate the proceeding until the contract dispute
11 has been resolved by a court of proper jurisdiction.

12 Sec. 14.0205. FIXING RATES. (a) On the expiration of the
13 60-day period required by Section 14.0204(e) or where the sale and
14 purchase of water or the provision of wholesale water or sewer
15 service is not under a written contract, the utility commission
16 shall, after hearing, fix just and reasonable rates to be charged.

17 (b) In fixing the rates under this chapter for the sale and
18 purchase of water and for the provision of wholesale water or sewer
19 service provided by a seller that is a political subdivision, the
20 utility commission shall fix rates that will be sufficient:

21 (1) to meet the political subdivision's debt service
22 and public security requirements or that do not impair the
23 political subdivision's financial integrity; and

24 (2) to permit the political subdivision to provide
25 continuity of service in weather emergencies.

26 (c) In determining the sufficiency of rates under
27 Subsection (b), the utility commission shall consider any testimony

1 or evidence provided by the political subdivision concerning the
2 political subdivision's debt service and public security
3 requirements or regarding impairment of the political
4 subdivision's financial integrity.

5 (d) The utility commission may not disallow the recovery of
6 a seller's costs or debt service and public security requirements
7 associated with facilities related to the provision of service on
8 the basis that the facilities are not used and useful in rendering
9 service to the purchaser or on the basis that the costs or debt
10 service and public security requirements were imprudently
11 incurred.

12 (e) The utility commission may, on a showing that the seller
13 acted arbitrarily or capriciously in including costs in a rate,
14 other than debt service and public security requirements, disallow
15 the recovery of the costs.

16 (f) The utility commission may not disallow costs
17 associated with a facility:

18 (1) incurred in a manner consistent with a state or a
19 regional water plan approved or adopted under Chapter 16; and

20 (2) incurred to permit the political subdivision to
21 provide continuity of service in weather emergencies.

22 Sec. 14.0206. SYSTEM RATES. A seller may charge a single
23 consolidated system rate for providing service to geographically
24 separate and distinct areas served by one or more separate
25 facilities. The reasonableness of the decision to charge a
26 consolidated system rate is not subject to review under this
27 chapter absent a showing that the seller acted arbitrarily or

1 capriciously.

2 Sec. 14.0207. COST ALLOCATION. In fixing the rates for sale
3 and purchase of water and for the provision of wholesale water or
4 sewer service under this chapter, the utility commission may not
5 allocate costs among purchasers in a manner inconsistent with the
6 allocation of costs contained in any contract between the seller
7 and another purchaser or purchasers, absent a showing that the
8 seller acted arbitrarily or capriciously.

9 SECTION 4. Sections 12.013 and 13.043(f), Water Code, are
10 repealed.

11 SECTION 5. This Act takes effect September 1, 2021.