

By: Rose

H.B. No. 3366

A BILL TO BE ENTITLED

AN ACT

relating to the rates charged by a water and sewer utility.

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

SECTION 1. Sections 13.043(e) and (h), Water Code, are amended to read as follows:

(e) In an appeal under Subsection (b) of this section, the commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may establish the effective date for the commission's rates at the original effective date as proposed by the service provider and may order refunds or allow a surcharge to recover lost revenues. The commission may not allow recovery of any rate case ~~[reasonable]~~ expenses incurred by the retail public utility in the appeal proceedings. The commission may consider only the information that was available to the governing body at the time the governing body made its decision ~~[and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings]~~. The rates established by the commission in an appeal under Subsection (b) of this section remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the commission determines that a financial hardship exists.

1 (h) The commission or executive director may~~[, on a motion~~  
2 ~~by the executive director or by the appellant under Subsection (a),~~  
3 ~~(b), or (f) of this section,]~~ establish interim rates to be in  
4 effect until a final decision is made in an appeal filed under  
5 Subsection (a), (b), or (f).

6 SECTION 2. (a) Section 13.145(a), Water Code, is amended to  
7 read as follows:

8 (a) A utility may consolidate more than one system under a  
9 single tariff only if:

10 (1) the regulatory authority finds that at the time  
11 the utility applies for a uniform tariff, all of the systems under  
12 the tariff are substantially similar in terms of facilities,  
13 quality of service, and cost of service; and

14 (2) the tariff provides for rates that promote water  
15 conservation for single-family residences and landscape  
16 irrigation.

17 (b) The changes in law made to Section 13.145(a), Water  
18 Code, as amended by this section, apply only to applications for a  
19 uniform tariff filed on or after the effective date of this Act. An  
20 application filed before the effective date of this Act is governed  
21 by the law in effect on the date the application is filed, and that  
22 law is continued in effect for that purpose.

23 SECTION 3. (a) Section 13.184, Water Code, is amended by  
24 adding Subsection (d) to read as follows:

25 (d) A utility may file with the commission an application to  
26 increase the utility's rates not more than one time in a 36-month  
27 period. A rate increase under this section may not exceed 20

1 percent of the cost of the utility's rates at the time of the  
2 application.

3 (b) The changes in law made to Section 13.184, Water Code,  
4 as amended by this section, apply only to an application for a rate  
5 increase that is filed on or after the effective date of this Act.  
6 An application that is filed before the effective date of this Act  
7 is subject to the law in effect at that time, and that law is  
8 continued in effect for that purpose.

9 SECTION 4. Section 13.185(h), Water Code, is amended to  
10 read as follows:

11 (h) The regulatory authority may not include for ratemaking  
12 purposes:

13 (1) legislative advocacy expenses, whether made  
14 directly or indirectly, including legislative advocacy expenses  
15 included in trade association dues;

16 (2) legal expenses, including attorney, consultant,  
17 and expert witness fees and court costs, incurred by a water and  
18 sewer utility in a contested proceeding under Section 13.187 or in  
19 an appeal of that proceeding, other than legal expenses described  
20 by Section 13.084 [~~costs of processing a refund or credit under~~  
21 ~~Section 13.187 of this chapter~~]; or

22 (3) any expenditure found by the regulatory authority  
23 to be unreasonable, unnecessary, or not in the public interest,  
24 including executive salaries, advertising expenses, legal expenses  
25 not described by Subdivision (2), and civil penalties or fines.

26 SECTION 5. Sections 13.187(a), (b), (d), (d-1), (e), (f),  
27 (k), (l), and (o), Water Code, are amended to read as follows:

1 (a) A utility may not make changes in its rates except by  
2 delivering a statement of intent to each ratepayer and with the  
3 regulatory authority having original jurisdiction at least 120 [~~60~~]  
4 days before the proposed effective date of the proposed change. The  
5 proposed effective date of the new rates must be the first day of a  
6 billing period, and the new rates may not apply to service received  
7 before the proposed effective date of the new rates. The statement  
8 of intent must include:

9 (1) the information required by the regulatory  
10 authority's rules;

11 (2) a billing comparison regarding the existing water  
12 rate and the new water rate computed for the use of:

13 (A) 10,000 gallons of water; and

14 (B) 30,000 gallons of water; and

15 (3) a billing comparison regarding the existing sewer  
16 rate and the new sewer rate computed for the use of 10,000 gallons,  
17 unless the utility proposes a flat rate for sewer services.

18 (b) A copy of the statement of intent shall be mailed or  
19 delivered to the appropriate offices of each affected municipality,  
20 to the executive director, and to any [~~other~~] affected persons as  
21 required by the regulatory authority's rules.

22 (d) Except as provided by Subsection (d-1), if the  
23 application or the statement of intent is not substantially  
24 complete or does not comply with the regulatory authority's rules,  
25 it may be rejected and the proposed effective date of the rate  
26 change may be suspended until a properly completed application is  
27 accepted by the regulatory authority and a proper statement of

1 intent is provided. The commission may also suspend the proposed  
2 effective date of any rate change if the utility does not have a  
3 certificate of public convenience and necessity or a completed  
4 application for a certificate or to transfer a certificate pending  
5 before the commission or if the utility is delinquent in paying the  
6 assessment and any applicable penalties or interest required by  
7 Section 5.701(n) of this code.

8 (d-1) Subject to Subsection (k), after [~~After~~] written  
9 notice to the utility, a local regulatory authority may suspend the  
10 proposed effective date of a rate change for not more than 90 days  
11 from the proposed effective date[, ~~except that the suspension shall~~  
12 ~~be extended by two days for each day a hearing exceeds 15 days. If~~  
13 ~~the local regulatory authority does not make a final determination~~  
14 ~~on the proposed rate before the expiration of the applicable~~  
15 ~~suspension period, the proposed rate shall be considered approved.~~  
16 ~~The approval is subject to the local regulatory authority's~~  
17 ~~continuation of a hearing in progress].~~

18 (e) The regulatory authority shall hold a hearing on the  
19 proposed rate increase if, [~~If,~~] before the 91st day after the  
20 [~~effective~~] date the statement of intent was provided to the  
21 authority and each ratepayer under Subsection (a) [~~of the rate~~  
22 ~~change~~], the regulatory authority receives a complaint from any  
23 affected municipality, or from the lesser of 1,000 or 10 percent of  
24 the ratepayers of the utility over whose rates the regulatory  
25 authority has original jurisdiction[, ~~the regulatory authority~~  
26 ~~shall set the matter for hearing].~~

27 (f) The regulatory authority may set the matter for hearing

1 on its own motion at any time within 120 days after the ~~[effective]~~  
 2 date the statement of intent was provided to the authority and each  
 3 ratepayer under Subsection (a) ~~[of the rate change]~~. If more than  
 4 half of the ratepayers of the utility receive service in a county  
 5 with a population of more than 2.5 million, the hearing must be held  
 6 at a location in that county.

7 (k) If the regulatory authority sets the matter for  
 8 ~~[receives at least the number of complaints from ratepayers~~  
 9 ~~required for the regulatory authority to set]~~ a hearing under  
 10 Subsection (e), the regulatory authority shall ~~[may]~~, pending the  
 11 hearing and a decision, suspend the date the rate change would  
 12 otherwise be effective until the date the regulatory authority  
 13 issues a final decision on the matter. ~~[Except as provided by~~  
 14 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~  
 15 ~~than:~~

16 ~~[(1) 90 days by a local regulatory authority; or~~  
 17 ~~[(2) 150 days by the commission.]~~

18 (l) At any time during the pendency of the rate proceeding  
 19 the regulatory authority or, if the regulatory authority is the  
 20 commission, the executive director may fix interim rates to remain  
 21 in effect until a final determination is made on the proposed rate.

22 (o) If the [a] regulatory authority does not set a hearing  
 23 on the proposed rate increase under Subsection (e) or (f), ~~[other~~  
 24 ~~than the commission establishes interim rates or an escrow account,~~  
 25 ~~the regulatory authority must make a final determination on the~~  
 26 ~~rates not later than the first anniversary of the effective date of~~  
 27 ~~the interim rates or escrowed rates or]~~ the rates are automatically

1 approved as requested by the utility.

2 SECTION 6. Sections 13.187(i), (j), and (n), Water Code,  
3 are repealed.

4 SECTION 7. Except as otherwise provided by this Act, this  
5 Act applies only to a statement of intent filed on or after the  
6 effective date of this Act. A rate change to which a statement of  
7 intent filed before the effective date of this Act applies is  
8 governed by the law in effect on the date the statement was filed,  
9 and that law is continued in effect for that purpose.

10 SECTION 8. This Act takes effect September 1, 2009.