

By: Larson

H.B. No. 71

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the establishment of certain water and sewer utility
3 rates and the transfer of certain functions from the Texas
4 Commission on Environmental Quality to the Public Utility
5 Commission of Texas.

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

7 ARTICLE 1. AUTHORITY TO ESTABLISH INTERIM RATES

8 SECTION 1.01. Subsection (h), Section 13.043, Water Code,
9 is amended to read as follows:

10 (h) The utility commission or the executive director of the
11 utility commission may~~[, on a motion by the executive director or by~~
12 ~~the appellant under Subsection (a), (b), or (f) of this section,]~~
13 establish interim rates to be in effect until a final decision is
14 made in an appeal filed under Subsection (a), (b), or (f).

15 SECTION 1.02. Subsections (b) and (l), Section 13.187,
16 Water Code, are amended to read as follows:

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

22 (l) At any time during the pendency of the rate proceeding
23 the regulatory authority or, if the regulatory authority is the
24 utility commission, the executive director of the utility

1 commission may fix interim rates to remain in effect until a final
2 determination is made on the proposed rate.

3 ARTICLE 2. WATER AND SEWER UTILITIES

4 SECTION 2.01. Section 13.002, Water Code, is amended by
5 amending Subdivisions (2) and (18) and adding Subdivision (22-a) to
6 read as follows:

7 (2) "Affiliated interest" or "affiliate" means:

8 (A) any person or corporation owning or holding
9 directly or indirectly five percent or more of the voting
10 securities of a utility;

11 (B) any person or corporation in any chain of
12 successive ownership of five percent or more of the voting
13 securities of a utility;

14 (C) any corporation five percent or more of the
15 voting securities of which is owned or controlled directly or
16 indirectly by a utility;

17 (D) any corporation five percent or more of the
18 voting securities of which is owned or controlled directly or
19 indirectly by any person or corporation that owns or controls
20 directly or indirectly five percent or more of the voting
21 securities of any utility or by any person or corporation in any
22 chain of successive ownership of five percent of those utility
23 securities;

24 (E) any person who is an officer or director of a
25 utility or of any corporation in any chain of successive ownership
26 of five percent or more of voting securities of a public utility;

27 (F) any person or corporation that the utility

1 commission, after notice and hearing, determines actually
2 exercises any substantial influence or control over the policies
3 and actions of a utility or over which a utility exercises such
4 control or that is under common control with a utility, such control
5 being the possession directly or indirectly of the power to direct
6 or cause the direction of the management and policies of another,
7 whether that power is established through ownership or voting of
8 securities or by any other direct or indirect means; or

9 (G) any person or corporation that the utility
10 commission, after notice and hearing, determines is exercising
11 substantial influence over the policies and actions of the utility
12 in conjunction with one or more persons or corporations with which
13 they are related by ownership or blood relationship, or by action in
14 concert, that together they are affiliated within the meaning of
15 this section, even though no one of them alone is so affiliated.

16 (18) "Regulatory authority" means, in accordance with
17 the context in which it is found, either the commission, the utility
18 commission, or the governing body of a municipality.

19 (22-a) "Utility commission" means the Public Utility
20 Commission of Texas.

21 SECTION 2.02. Section 13.004, Water Code, is amended to
22 read as follows:

23 Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER
24 CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS.

25 (a) Notwithstanding any other law, the utility commission has the
26 same jurisdiction over a water supply or sewer service corporation
27 that the utility commission has under this chapter over a water and

1 sewer utility if the utility commission finds that the water supply
2 or sewer service corporation:

3 (1) is failing to conduct annual or special meetings
4 in compliance with Section 67.007; or

5 (2) is operating in a manner that does not comply with
6 the requirements for classifications as a nonprofit water supply or
7 sewer service corporation prescribed by Sections 13.002(11) and
8 (24).

9 (b) If the water supply or sewer service corporation
10 voluntarily converts to a special utility district operating under
11 Chapter 65, the utility commission's jurisdiction provided by this
12 section ends.

13 SECTION 2.03. Section 13.011, Water Code, is amended to
14 read as follows:

15 Sec. 13.011. EMPLOYEES. (a) The executive director of the
16 utility commission and the executive director of the commission,
17 subject to approval, as applicable, by the utility commission or
18 the commission, shall employ any engineering, accounting, and
19 administrative personnel necessary to carry out each agency's
20 powers and duties under this chapter.

21 (b) The executive director and the commission's staff are
22 responsible for the gathering of information relating to all
23 matters within the jurisdiction of the commission under this
24 subchapter. The executive director of the utility commission and
25 the utility commission's staff are responsible for the gathering of
26 information relating to all matters within the jurisdiction of the
27 utility commission under this subchapter. The duties of the

1 respective executive directors and staffs [~~director and the staff~~]
2 include:

3 (1) accumulation of evidence and other information
4 from water and sewer utilities, [~~and~~] from the agency and governing
5 body, [~~commission and the board~~] and from other sources for the
6 purposes specified by this chapter;

7 (2) preparation and presentation of evidence before
8 the agency [~~commission~~] or its appointed examiner in proceedings;

9 (3) conducting investigations of water and sewer
10 utilities under the jurisdiction of the agency [~~commission~~];

11 (4) preparation of recommendations that the agency
12 [~~commission~~] undertake an investigation of any matter within its
13 jurisdiction;

14 (5) preparation of recommendations and a report for
15 inclusion in the annual report of the agency [~~commission~~];

16 (6) protection and representation of the public
17 interest [~~, together with the public interest advocate,~~] before the
18 agency [~~commission~~]; and

19 (7) other activities that are reasonably necessary to
20 enable the executive director and the staff to perform their
21 duties.

22 SECTION 2.04. Section 13.014, Water Code, is amended to
23 read as follows:

24 Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR
25 UTILITY COMMISSION. The attorney general shall represent the
26 commission or the utility commission under this chapter in all
27 matters before the state courts and any court of the United States.

1 SECTION 2.05. Subchapter B, Chapter 13, Water Code, is
2 amended by adding Section 13.017 to read as follows:

3 Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND
4 DUTIES. (a) In this section, "counsellor" and "office" have the
5 meanings assigned by Section 11.003, Utilities Code.

6 (b) The office represents the interests of residential and
7 small commercial consumers under this chapter. The office:

8 (1) shall assess the effect of utility rate changes
9 and other regulatory actions on residential consumers in this
10 state;

11 (2) shall advocate in the office's own name a position
12 determined by the counsellor to be most advantageous to a
13 substantial number of residential consumers;

14 (3) may appear or intervene, as a party or otherwise,
15 as a matter of right on behalf of:

16 (A) residential consumers, as a class, in any
17 proceeding before the utility commission, including an alternative
18 dispute resolution proceeding; and

19 (B) small commercial consumers, as a class, in
20 any proceeding in which the counsellor determines that small
21 commercial consumers are in need of representation, including an
22 alternative dispute resolution proceeding;

23 (4) may initiate or intervene as a matter of right or
24 otherwise appear in a judicial proceeding:

25 (A) that involves an action taken by an
26 administrative agency in a proceeding, including an alternative
27 dispute resolution proceeding, in which the counsellor is

1 authorized to appear; or

2 (B) in which the counsellor determines that
3 residential consumers or small commercial consumers are in need of
4 representation;

5 (5) is entitled to the same access as a party, other
6 than utility commission staff, to records gathered by the utility
7 commission under Section 13.133;

8 (6) is entitled to discovery of any nonprivileged
9 matter that is relevant to the subject matter of a proceeding or
10 petition before the utility commission;

11 (7) may represent an individual residential or small
12 commercial consumer with respect to the consumer's disputed
13 complaint concerning retail utility services that is unresolved
14 before the utility commission; and

15 (8) may recommend legislation to the legislature that
16 the office determines would positively affect the interests of
17 residential and small commercial consumers.

18 (c) This section does not limit the authority of the utility
19 commission to represent residential or small commercial consumers.

20 (d) The appearance of the counsellor in a proceeding does
21 not preclude the appearance of other parties on behalf of
22 residential or small commercial consumers. The counsellor may not
23 be grouped with any other party.

24 SECTION 2.06. Section 13.041, Water Code, is amended to
25 read as follows:

26 Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND
27 COMMISSION [~~POWER~~]; RULES; HEARINGS. (a) The utility commission

1 may regulate and supervise the business of each [~~every~~] water and
2 sewer utility within its jurisdiction, including ratemaking and
3 other economic regulation. The commission shall regulate water and
4 sewer utilities within its jurisdiction to ensure safe drinking
5 water and environmental protection. The utility commission and the
6 commission [~~and~~] may do all things, whether specifically designated
7 in this chapter or implied in this chapter, necessary and
8 convenient to the exercise of these powers [~~this power~~] and
9 jurisdiction. The utility commission may consult with the
10 commission as necessary in carrying out its duties related to the
11 regulation of water and sewer utilities.

12 (b) The commission and the utility commission shall adopt
13 and enforce rules reasonably required in the exercise of [~~its~~]
14 powers and jurisdiction of each agency, including rules governing
15 practice and procedure before the commission and the utility
16 commission.

17 (c) The commission and the utility commission may call and
18 hold hearings, administer oaths, receive evidence at hearings,
19 issue subpoenas to compel the attendance of witnesses and the
20 production of papers and documents, and make findings of fact and
21 decisions with respect to administering this chapter or the rules,
22 orders, or other actions of the commission or the utility
23 commission.

24 (d) The utility commission may issue emergency orders, with
25 or without a hearing:

26 (1) to compel a water or sewer service provider that
27 has obtained or is required to obtain a certificate of public

1 convenience and necessity to provide continuous and adequate water
2 service, sewer service, or both, if the discontinuance of the
3 service is imminent or has occurred because of the service
4 provider's actions or failure to act; and

5 (2) to compel a retail public utility to provide an
6 emergency interconnection with a neighboring retail public utility
7 for the provision of temporary water or sewer service, or both, for
8 not more than 90 days if service discontinuance or serious
9 impairment in service is imminent or has occurred.

10 (e) The utility commission may establish reasonable
11 compensation for the temporary service required under Subsection
12 (d)(2) [~~of this section~~] and may allow the retail public utility
13 receiving the service to make a temporary adjustment to its rate
14 structure to ensure proper payment.

15 (f) If an order is issued under Subsection (d) without a
16 hearing, the order shall fix a time, as soon after the emergency
17 order is issued as is practicable, and place for a hearing to be
18 held before the utility commission.

19 (g) The regulatory assessment required by Section 5.701(n)
20 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the
21 utility commission under Section 13.043 [~~of this code~~]. The
22 commission has the authority to enforce payment and collection of
23 the regulatory assessment.

24 SECTION 2.07. Section 13.042, Water Code, is amended to
25 read as follows:

26 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND
27 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the

1 limitations imposed in this chapter and for the purpose of
2 regulating rates and services so that those rates may be fair, just,
3 and reasonable and the services adequate and efficient, the
4 governing body of each municipality has exclusive original
5 jurisdiction over all water and sewer utility rates, operations,
6 and services provided by a water and sewer utility within its
7 corporate limits.

8 (b) The governing body of a municipality by ordinance may
9 elect to have the utility commission exercise exclusive original
10 jurisdiction over the utility rates, operation, and services of
11 utilities, within the incorporated limits of the municipality.

12 (c) The governing body of a municipality that surrenders its
13 jurisdiction to the utility commission may reinstate its
14 jurisdiction by ordinance at any time after the second anniversary
15 of the date on which the municipality surrendered its jurisdiction
16 to the utility commission, except that the municipality may not
17 reinstate its jurisdiction during the pendency of a rate proceeding
18 before the utility commission. The municipality may not surrender
19 its jurisdiction again until the second anniversary of the date on
20 which the municipality reinstates jurisdiction.

21 (d) The utility commission shall have exclusive appellate
22 jurisdiction to review orders or ordinances of those municipalities
23 as provided in this chapter.

24 (e) The utility commission shall have exclusive original
25 jurisdiction over water and sewer utility rates, operations, and
26 services not within the incorporated limits of a municipality
27 exercising exclusive original jurisdiction over those rates,

1 operations, and services as provided in this chapter.

2 (f) This subchapter does not give the utility commission
3 power or jurisdiction to regulate or supervise the rates or service
4 of a utility owned and operated by a municipality, directly or
5 through a municipally owned corporation, within its corporate
6 limits or to affect or limit the power, jurisdiction, or duties of a
7 municipality that regulates land and supervises water and sewer
8 utilities within its corporate limits, except as provided by this
9 code.

10 SECTION 2.08. Subsections (a), (b), (c), (e), (f), (g), and
11 (j), Section 13.043, Water Code, are amended to read as follows:

12 (a) Any party to a rate proceeding before the governing body
13 of a municipality may appeal the decision of the governing body to
14 the utility commission. This subsection does not apply to a
15 municipally owned utility. An appeal under this subsection must be
16 initiated within 90 days after the date of notice of the final
17 decision by the governing body by filing a petition for review with
18 the utility commission and by serving copies on all parties to the
19 original rate proceeding. The utility commission shall hear the
20 appeal de novo and shall fix in its final order the rates the
21 governing body should have fixed in the action from which the appeal
22 was taken and may include reasonable expenses incurred in the
23 appeal proceedings. The utility commission may establish the
24 effective date for the utility commission's rates at the original
25 effective date as proposed by the utility provider and may order
26 refunds or allow a surcharge to recover lost revenues. The utility
27 commission may consider only the information that was available to

1 the governing body at the time the governing body made its decision
2 and evidence of reasonable expenses incurred in the appeal
3 proceedings.

4 (b) Ratepayers of the following entities may appeal the
5 decision of the governing body of the entity affecting their water,
6 drainage, or sewer rates to the utility commission:

7 (1) a nonprofit water supply or sewer service
8 corporation created and operating under Chapter 67;

9 (2) a utility under the jurisdiction of a municipality
10 inside the corporate limits of the municipality;

11 (3) a municipally owned utility, if the ratepayers
12 reside outside the corporate limits of the municipality;

13 (4) a district or authority created under Article III,
14 Section 52, or Article XVI, Section 59, of the Texas Constitution
15 that provides water or sewer service to household users; and

16 (5) a utility owned by an affected county, if the
17 ratepayer's rates are actually or may be adversely affected. For
18 the purposes of this section ratepayers who reside outside the
19 boundaries of the district or authority shall be considered a
20 separate class from ratepayers who reside inside those boundaries.

21 (c) An appeal under Subsection (b) [~~of this section~~] must be
22 initiated by filing a petition for review with the utility
23 commission and the entity providing service within 90 days after
24 the effective day of the rate change or, if appealing under
25 Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after
26 the date on which the governing body of the municipality or affected
27 county makes a final decision. The petition must be signed by the

1 lesser of 10,000 or 10 percent of those ratepayers whose rates have
2 been changed and who are eligible to appeal under Subsection (b) [~~of~~
3 ~~this section~~].

4 (e) In an appeal under Subsection (b) [~~of this section~~], the
5 utility commission shall hear the appeal de novo and shall fix in
6 its final order the rates the governing body should have fixed in
7 the action from which the appeal was taken. The utility commission
8 may establish the effective date for the utility commission's rates
9 at the original effective date as proposed by the service provider,
10 may order refunds or allow a surcharge to recover lost revenues, and
11 may allow recovery of reasonable expenses incurred by the retail
12 public utility in the appeal proceedings. The utility commission
13 may consider only the information that was available to the
14 governing body at the time the governing body made its decision and
15 evidence of reasonable expenses incurred by the retail public
16 utility in the appeal proceedings. The rates established by the
17 utility commission in an appeal under Subsection (b) [~~of this~~
18 ~~section~~] remain in effect until the first anniversary of the
19 effective date proposed by the retail public utility for the rates
20 being appealed or until changed by the service provider, whichever
21 date is later, unless the utility commission determines that a
22 financial hardship exists.

23 (f) A retail public utility that receives water or sewer
24 service from another retail public utility or political subdivision
25 of the state, including an affected county, may appeal to the
26 utility commission a decision of the provider of water or sewer
27 service affecting the amount paid for water or sewer service. An

1 appeal under this subsection must be initiated within 90 days after
2 the date of notice of the decision is received from the provider of
3 water or sewer service by the filing of a petition by the retail
4 public utility.

5 (g) An applicant for service from an affected county or a
6 water supply or sewer service corporation may appeal to the utility
7 commission a decision of the county or water supply or sewer service
8 corporation affecting the amount to be paid to obtain service other
9 than the regular membership or tap fees. In addition to the factors
10 specified under Subsection (j), in an appeal brought under this
11 subsection the utility commission shall determine whether the
12 amount paid by the applicant is consistent with the tariff of the
13 water supply or sewer service corporation and is reasonably related
14 to the cost of installing on-site and off-site facilities to
15 provide service to that applicant. If the utility commission finds
16 the amount charged to be clearly unreasonable, it shall establish
17 the fee to be paid for that applicant. An appeal under this
18 subsection must be initiated within 90 days after the date written
19 notice is provided to the applicant or member of the decision of an
20 affected county or water supply or sewer service corporation
21 relating to the applicant's initial request for that service. A
22 determination made by the utility commission on an appeal under
23 this subsection is binding on all similarly situated applicants for
24 service, and the utility commission may not consider other appeals
25 on the same issue until the applicable provisions of the tariff of
26 the water supply or sewer service corporation are amended.

27 (j) In an appeal under this section, the utility commission

1 shall ensure that every rate made, demanded, or received by any
2 retail public utility or by any two or more retail public utilities
3 jointly shall be just and reasonable. Rates shall not be
4 unreasonably preferential, prejudicial, or discriminatory but
5 shall be sufficient, equitable, and consistent in application to
6 each class of customers. The utility commission shall use a
7 methodology that preserves the financial integrity of the retail
8 public utility. For agreements between municipalities the utility
9 commission shall consider the terms of any wholesale water or sewer
10 service agreement in an appellate rate proceeding.

11 SECTION 2.09. Subsection (b), Section 13.044, Water Code,
12 is amended to read as follows:

13 (b) Notwithstanding the provisions of any resolution,
14 ordinance, or agreement, a district may appeal the rates imposed by
15 the municipality by filing a petition with the utility commission.
16 The utility commission shall hear the appeal de novo and the
17 municipality shall have the burden of proof to establish that the
18 rates are just and reasonable. The utility commission shall fix the
19 rates to be charged by the municipality and the municipality may not
20 increase such rates without the approval of the utility commission.

21 SECTION 2.10. Section 13.046, Water Code, is amended to
22 read as follows:

23 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR
24 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The
25 utility commission by rule shall establish a procedure that allows
26 a retail public utility that takes over the provision of services
27 for a nonfunctioning retail water or sewer utility service provider

1 to charge a reasonable rate for the services provided to the
2 customers of the nonfunctioning system and to bill the customers
3 for the services at that rate immediately to recover service costs.

4 (b) The rules must provide a streamlined process that the
5 retail public utility that takes over the nonfunctioning system may
6 use to apply to the utility commission for a ruling on the
7 reasonableness of the rates the utility is charging under
8 Subsection (a). The process must allow for adequate consideration
9 of costs for interconnection or other costs incurred in making
10 services available and of the costs that may necessarily be
11 incurred to bring the nonfunctioning system into compliance with
12 utility commission and commission rules.

13 (c) The utility commission shall provide a reasonable
14 period for the retail public utility that takes over the
15 nonfunctioning system to bring the nonfunctioning system into
16 compliance with utility commission and commission rules during
17 which the utility commission or the commission may not impose a
18 penalty for any deficiency in the system that is present at the time
19 the utility takes over the nonfunctioning system. The utility
20 commission must consult with the utility before determining the
21 period and may grant an extension of the period for good cause.

22 SECTION 2.11. Section 13.081, Water Code, is amended to
23 read as follows:

24 Sec. 13.081. FRANCHISES. This chapter may not be construed
25 as in any way limiting the rights and powers of a municipality to
26 grant or refuse franchises to use the streets and alleys within its
27 limits and to make the statutory charges for their use, but no

1 provision of any franchise agreement may limit or interfere with
2 any power conferred on the utility commission by this chapter. If a
3 municipality performs regulatory functions under this chapter, it
4 may make such other charges as may be provided in the applicable
5 franchise agreement, together with any other charges permitted by
6 this chapter.

7 SECTION 2.12. Section 13.082, Water Code, is amended to
8 read as follows:

9 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT
10 AREAS. (a) Notwithstanding any other provision of this section,
11 municipalities shall continue to regulate each kind of local
12 utility service inside their boundaries until the utility
13 commission has assumed jurisdiction over the respective utility
14 pursuant to this chapter.

15 (b) If a municipality does not surrender its jurisdiction,
16 local utility service within the boundaries of the municipality
17 shall be exempt from regulation by the utility commission under
18 this chapter to the extent that this chapter applies to local
19 service, and the municipality shall have, regarding service within
20 its boundaries, the right to exercise the same regulatory powers
21 under the same standards and rules as the utility commission or
22 other standards and rules not inconsistent with them. The utility
23 commission's rules relating to service and response to requests for
24 service for utilities operating within a municipality's corporate
25 limits apply unless the municipality adopts its own rules.

26 (c) Notwithstanding any election, the utility commission
27 may consider water and sewer utilities' revenues and return on

1 investment in exempt areas in fixing rates and charges in nonexempt
2 areas and may also exercise the powers conferred necessary to give
3 effect to orders under this chapter for the benefit of nonexempt
4 areas. Likewise, in fixing rates and charges in the exempt area,
5 the governing body may consider water and sewer utilities' revenues
6 and return on investment in nonexempt areas.

7 (d) Utilities serving exempt areas are subject to the
8 reporting requirements of this chapter. Those reports and tariffs
9 shall be filed with the governing body of the municipality as well
10 as with the utility commission.

11 (e) This section does not limit the duty and power of the
12 utility commission to regulate service and rates of municipally
13 regulated water and sewer utilities for service provided to other
14 areas in Texas.

15 SECTION 2.13. Section 13.085, Water Code, is amended to
16 read as follows:

17 Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,
18 the utility commission may advise and assist municipalities and
19 affected counties in connection with questions and proceedings
20 arising under this chapter. This assistance may include aid to
21 municipalities or an affected county in connection with matters
22 pending before the utility commission, the courts, the governing
23 body of any municipality, or the commissioners court of an affected
24 county, including making members of the staff available to them as
25 witnesses and otherwise providing evidence.

26 SECTION 2.14. Subsection (c), Section 13.087, Water Code,
27 is amended to read as follows:

1 (c) Notwithstanding any other provision of this chapter,
2 the utility commission has jurisdiction to enforce this section.

3 SECTION 2.15. Subsections (a), (b), (c), and (e), Section
4 13.131, Water Code, are amended to read as follows:

5 (a) Every water and sewer utility shall keep and render to
6 the regulatory authority in the manner and form prescribed by the
7 utility commission uniform accounts of all business transacted.
8 The utility commission may also prescribe forms of books, accounts,
9 records, and memoranda to be kept by those utilities, including the
10 books, accounts, records, and memoranda of the rendition of and
11 capacity for service as well as the receipts and expenditures of
12 money, and any other forms, records, and memoranda that in the
13 judgment of the utility commission may be necessary to carry out
14 this chapter.

15 (b) In the case of a utility subject to regulation by a
16 federal regulatory agency, compliance with the system of accounts
17 prescribed for the particular class of utilities by that agency may
18 be considered a sufficient compliance with the system prescribed by
19 the utility commission. However, the utility commission may
20 prescribe forms of books, accounts, records, and memoranda covering
21 information in addition to that required by the federal agency. The
22 system of accounts and the forms of books, accounts, records, and
23 memoranda prescribed by the utility commission for a utility or
24 class of utilities may not conflict or be inconsistent with the
25 systems and forms established by a federal agency for that utility
26 or class of utilities.

27 (c) The utility commission shall fix proper and adequate

1 rates and methods of depreciation, amortization, or depletion of
2 the several classes of property of each utility and shall require
3 every utility to carry a proper and adequate depreciation account
4 in accordance with those rates and methods and with any other rules
5 the utility commission prescribes. Rules adopted under this
6 subsection must require the book cost less net salvage of
7 depreciable utility plant retired to be charged in its entirety to
8 the accumulated depreciation account in a manner consistent with
9 accounting treatment of regulated electric and gas utilities in
10 this state. Those rates, methods, and accounts shall be utilized
11 uniformly and consistently throughout the rate-setting and appeal
12 proceedings.

13 (e) Every utility is required to keep and render its books,
14 accounts, records, and memoranda accurately and faithfully in the
15 manner and form prescribed by the utility commission and to comply
16 with all directions of the regulatory authority relating to those
17 books, accounts, records, and memoranda. The regulatory authority
18 may require the examination and audit of all accounts.

19 SECTION 2.16. Section 13.132, Water Code, is amended to
20 read as follows:

21 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The
22 utility commission may:

23 (1) require that water and sewer utilities report to
24 it any information relating to themselves and affiliated interests
25 both inside and outside this state that it considers useful in the
26 administration of this chapter;

27 (2) establish forms for all reports;

1 (3) determine the time for reports and the frequency
2 with which any reports are to be made;

3 (4) require that any reports be made under oath;

4 (5) require that a copy of any contract or arrangement
5 between any utility and any affiliated interest be filed with it and
6 require that such a contract or arrangement that is not in writing
7 be reduced to writing;

8 (6) require that a copy of any report filed with any
9 federal agency or any governmental agency or body of any other state
10 be filed with it; and

11 (7) require that a copy of annual reports showing all
12 payments of compensation, other than salary or wages subject to the
13 withholding of federal income tax, made to residents of Texas, or
14 with respect to legal, administrative, or legislative matters in
15 Texas, or for representation before the Texas Legislature or any
16 governmental agency or body be filed with it.

17 (b) On the request of the governing body of any
18 municipality, the utility commission may provide sufficient staff
19 members to advise and consult with the municipality on any pending
20 matter.

21 SECTION 2.17. Subsection (b), Section 13.133, Water Code,
22 is amended to read as follows:

23 (b) The regulatory authority may require, by order or
24 subpoena served on any utility, the production within this state at
25 the time and place it may designate of any books, accounts, papers,
26 or records kept by that utility outside the state or verified copies
27 of them if the regulatory authority [~~commission~~] so orders. A

1 utility failing or refusing to comply with such an order or subpoena
2 violates this chapter.

3 SECTION 2.18. Subsections (b) and (c), Section 13.136,
4 Water Code, are amended to read as follows:

5 (b) Each utility annually shall file a service and financial
6 report in a form and at times specified by utility commission rule.

7 (c) Every water supply or sewer service corporation shall
8 file with the utility commission tariffs showing all rates that are
9 subject to the appellate jurisdiction of the utility commission and
10 that are in force at the time for any utility service, product, or
11 commodity offered. Every water supply or sewer service corporation
12 shall file with and as a part of those tariffs all rules and
13 regulations relating to or affecting the rates, utility service,
14 product, or commodity furnished. The filing required under this
15 subsection shall be for informational purposes only.

16 SECTION 2.19. Section 13.137, Water Code, is amended to
17 read as follows:

18 Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF
19 UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

20 (1) make available and notify its customers of a
21 business location where its customers may make payments to prevent
22 disconnection of or to restore service:

23 (A) in each county in which the utility provides
24 service; or

25 (B) not more than 20 miles from the residence of
26 any residential customer if there is no location to receive
27 payments in the county; and

1 (2) have an office in a county of this state or in the
2 immediate area in which its property or some part of its property is
3 located in which it shall keep all books, accounts, records, and
4 memoranda required by the utility commission to be kept in this
5 state.

6 (b) The utility commission by rule may provide for waiving
7 the requirements of Subsection (a)(1) for a utility for which
8 meeting those requirements would cause a rate increase or otherwise
9 harm or inconvenience customers. The rules must provide for an
10 additional 14 days to be given for a customer to pay before a
11 utility that is granted a waiver may disconnect service for late
12 payment.

13 (c) Books, accounts, records, or memoranda required by the
14 regulatory authority to be kept in the state may not be removed from
15 the state, except on conditions prescribed by the utility
16 commission.

17 SECTION 2.20. Subsection (b), Section 13.139, Water Code,
18 is amended to read as follows:

19 (b) The governing body of a municipality, as the regulatory
20 authority for public utilities operating within its corporate
21 limits, and the utility commission or the commission as the
22 regulatory authority for public utilities operating outside the
23 corporate limits of any municipality, after reasonable notice and
24 hearing on its own motion, may:

25 (1) ascertain and fix just and reasonable standards,
26 classifications, regulations, service rules, minimum service
27 standards or practices to be observed and followed with respect to

1 the service to be furnished;

2 (2) ascertain and fix adequate and reasonable
3 standards for the measurement of the quantity, quality, pressure,
4 or other condition pertaining to the supply of the service;

5 (3) prescribe reasonable regulations for the
6 examination and testing of the service and for the measurement of
7 service; and

8 (4) establish or approve reasonable rules,
9 regulations, specifications, and standards to secure the accuracy
10 of all meters, instruments, and equipment used for the measurement
11 of any utility service.

12 SECTION 2.21. Section 13.1395, Water Code, is amended by
13 adding Subsection (m) to read as follows:

14 (m) The commission shall coordinate with the utility
15 commission in the administration of this section.

16 SECTION 2.22. Subsection (b), Section 13.142, Water Code,
17 is amended to read as follows:

18 (b) The utility commission shall adopt rules concerning
19 payment of utility bills that are consistent with Chapter 2251,
20 Government Code.

21 SECTION 2.23. Section 13.144, Water Code, is amended to
22 read as follows:

23 Sec. 13.144. NOTICE OF WHOLESAL WATER SUPPLY CONTRACT. A
24 district or authority created under Section 52, Article III, or
25 Section 59, Article XVI, Texas Constitution, a retail public
26 utility, a wholesale water service, or other person providing a
27 retail public utility with a wholesale water supply shall provide

1 the utility commission and the commission with a certified copy of
2 any wholesale water supply contract with a retail public utility
3 within 30 days after the date of the execution of the contract. The
4 submission must include the amount of water being supplied, term of
5 the contract, consideration being given for the water, purpose of
6 use, location of use, source of supply, point of delivery,
7 limitations on the reuse of water, a disclosure of any affiliated
8 interest between the parties to the contract, and any other
9 condition or agreement relating to the contract.

10 SECTION 2.24. Subsection (a), Section 13.147, Water Code,
11 is amended to read as follows:

12 (a) A retail public utility providing water service may
13 contract with a retail public utility providing sewer service to
14 bill and collect the sewer service provider's fees and payments as
15 part of a consolidated process with the billing and collection of
16 the water service provider's fees and payments. The water service
17 provider may provide that service only for customers who are served
18 by both providers in an area covered by both providers'
19 certificates of public convenience and necessity. If the water
20 service provider refuses to enter into a contract under this
21 section or if the water service provider and sewer service provider
22 cannot agree on the terms of a contract, the sewer service provider
23 may petition the utility commission to issue an order requiring the
24 water service provider to provide that service.

25 SECTION 2.25. Subsection (b), Section 13.181, Water Code,
26 is amended to read as follows:

27 (b) Subject to this chapter, the utility commission has all

1 authority and power of the state to ensure compliance with the
2 obligations of utilities under this chapter. For this purpose the
3 regulatory authority may fix and regulate rates of utilities,
4 including rules and regulations for determining the classification
5 of customers and services and for determining the applicability of
6 rates. A rule or order of the regulatory authority may not conflict
7 with the rulings of any federal regulatory body. The utility
8 commission may adopt rules which authorize a utility which is
9 permitted under Section 13.242(c) to provide service without a
10 certificate of public convenience and necessity to request or
11 implement a rate increase and operate according to rules,
12 regulations, and standards of service other than those otherwise
13 required under this chapter provided that rates are just and
14 reasonable for customers and the utility and that service is safe,
15 adequate, efficient, and reasonable.

16 SECTION 2.26. Subsections (c) and (d), Section 13.182,
17 Water Code, are amended to read as follows:

18 (c) For ratemaking purposes, the utility commission may
19 treat two or more municipalities served by a utility as a single
20 class wherever the utility commission considers that treatment to
21 be appropriate.

22 (d) The utility commission by rule shall establish a
23 preference that rates under a consolidated tariff be consolidated
24 by region. The regions under consolidated tariffs must be
25 determined on a case-by-case basis.

26 SECTION 2.27. Subsection (d), Section 13.183, Water Code,
27 is amended to read as follows:

1 (d) A regulatory authority other than the utility
2 commission may not approve an acquisition adjustment for a system
3 purchased before the effective date of an ordinance authorizing
4 acquisition adjustments.

5 SECTION 2.28. Subsection (a), Section 13.184, Water Code,
6 is amended to read as follows:

7 (a) Unless the utility commission establishes alternate
8 rate methodologies in accordance with Section 13.183(c), the
9 utility commission may not prescribe any rate that will yield more
10 than a fair return on the invested capital used and useful in
11 rendering service to the public. The governing body of a
12 municipality exercising its original jurisdiction over rates and
13 services may use alternate ratemaking methodologies established by
14 ordinance or by utility commission rule in accordance with Section
15 13.183(c). Unless the municipal regulatory authority uses
16 alternate ratemaking methodologies established by ordinance or by
17 utility commission rule in accordance with Section 13.183(c), it
18 may not prescribe any rate that will yield more than a fair return
19 on the invested capital used and useful in rendering service to the
20 public.

21 SECTION 2.29. Subsections (d), (k), and (o), Section
22 13.187, Water Code, are amended to read as follows:

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

1 regulatory authority and a proper statement of intent is provided.
2 The utility commission may also suspend the effective date of any
3 rate change if the utility does not have a certificate of public
4 convenience and necessity or a completed application for a
5 certificate or to transfer a certificate pending before the utility
6 commission or if the utility is delinquent in paying the assessment
7 and any applicable penalties or interest required by Section
8 5.701(n) [~~of this code~~].

9 (k) If the regulatory authority receives at least the number
10 of complaints from ratepayers required for the regulatory authority
11 to set a hearing under Subsection (e), the regulatory authority
12 may, pending the hearing and a decision, suspend the date the rate
13 change would otherwise be effective. 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 utility commission.

18 (o) If a regulatory authority other than the utility
19 commission establishes interim rates or an escrow account, the
20 regulatory authority must make a final determination on the rates
21 not later than the first anniversary of the effective date of the
22 interim rates or escrowed rates or the rates are automatically
23 approved as requested by the utility.

24 SECTION 2.30. Subsection (a), Section 13.188, Water Code,
25 is amended to read as follows:

26 (a) Notwithstanding any other provision in this chapter,
27 the utility commission by rule shall adopt a procedure allowing a

1 utility to file with the utility commission an application to
2 timely adjust the utility's rates to reflect an increase or
3 decrease in documented energy costs in a pass through clause. The
4 utility commission, by rule, shall require the pass through of
5 documented decreases in energy costs within a reasonable time. The
6 pass through, whether a decrease or increase, shall be implemented
7 on no later than an annual basis, unless the utility commission
8 determines a special circumstance applies.

9 SECTION 2.31. Subsections (a) and (d), Section 13.241,
10 Water Code, are amended to read as follows:

11 (a) In determining whether to grant or amend a certificate
12 of public convenience and necessity, the utility commission shall
13 ensure that the applicant possesses the financial, managerial, and
14 technical capability to provide continuous and adequate service.

15 (d) Before the utility commission grants a new certificate
16 of convenience and necessity for an area which would require
17 construction of a physically separate water or sewer system, the
18 applicant must demonstrate to the utility commission that
19 regionalization or consolidation with another retail public
20 utility is not economically feasible.

21 SECTION 2.32. Subsections (a) and (c), Section 13.242,
22 Water Code, are amended to read as follows:

23 (a) Unless otherwise specified, a utility, a utility
24 operated by an affected county, or a water supply or sewer service
25 corporation may not in any way render retail water or sewer utility
26 service directly or indirectly to the public without first having
27 obtained from the utility commission a certificate that the present

1 or future public convenience and necessity will require that
2 installation, operation, or extension, and except as otherwise
3 provided by this subchapter, a retail public utility may not
4 furnish, make available, render, or extend retail water or sewer
5 utility service to any area to which retail water or sewer utility
6 service is being lawfully furnished by another retail public
7 utility without first having obtained a certificate of public
8 convenience and necessity that includes the area in which the
9 consuming facility is located.

10 (c) The utility commission may by rule allow a municipality
11 or utility or water supply corporation to render retail water
12 service without a certificate of public convenience and necessity
13 if the municipality has given notice under Section 13.255 [~~of this~~
14 ~~code~~] that it intends to provide retail water service to an area or
15 if the utility or water supply corporation has less than 15
16 potential connections and is not within the certificated area of
17 another retail public utility.

18 SECTION 2.33. Section 13.244, Water Code, is amended to
19 read as follows:

20 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;
21 EVIDENCE AND CONSENT. (a) To obtain a certificate of public
22 convenience and necessity or an amendment to a certificate, a
23 public utility or water supply or sewer service corporation shall
24 submit to the utility commission an application for a certificate
25 or for an amendment as provided by this section.

26 (b) Each public utility and water supply or sewer service
27 corporation shall file with the utility commission a map or maps

1 showing all its facilities and illustrating separately facilities
2 for production, transmission, and distribution of its services, and
3 each certificated retail public utility shall file with the utility
4 commission a map or maps showing any facilities, customers, or area
5 currently being served outside its certificated areas.

6 (c) Each applicant for a certificate or for an amendment
7 shall file with the utility commission evidence required by the
8 commission to show that the applicant has received the required
9 consent, franchise, or permit of the proper municipality or other
10 public authority.

11 (d) An application for a certificate of public convenience
12 and necessity or for an amendment to a certificate must contain:

13 (1) a description of the proposed service area by:

14 (A) a metes and bounds survey certified by a
15 licensed state land surveyor or a registered professional land
16 surveyor;

17 (B) the Texas State Plane Coordinate System;

18 (C) verifiable landmarks, including a road,
19 creek, or railroad line; or

20 (D) if a recorded plat of the area exists, lot and
21 block number;

22 (2) a description of any requests for service in the
23 proposed service area;

24 (3) a capital improvements plan, including a budget
25 and estimated timeline for construction of all facilities necessary
26 to provide full service to the entire proposed service area;

27 (4) a description of the sources of funding for all

1 facilities;

2 (5) to the extent known, a description of current and
3 projected land uses, including densities;

4 (6) a current financial statement of the applicant;

5 (7) according to the tax roll of the central appraisal
6 district for each county in which the proposed service area is
7 located, a list of the owners of each tract of land that is:

8 (A) at least 50 acres; and

9 (B) wholly or partially located within the
10 proposed service area; and

11 (8) any other item required by the utility commission.

12 SECTION 2.34. (a) If S.B. No. 573, Acts of the 82nd
13 Legislature, Regular Session, 2011, does not become law,
14 Subsections (b), (c), and (e), Section 13.245, Water Code, are
15 amended to read as follows:

16 (b) Except as provided by Subsection (c), the utility
17 commission may not grant to a retail public utility a certificate of
18 public convenience and necessity for a service area within the
19 boundaries or extraterritorial jurisdiction of a municipality
20 without the consent of the municipality. The municipality may not
21 unreasonably withhold the consent. As a condition of the consent, a
22 municipality may require that all water and sewer facilities be
23 designed and constructed in accordance with the municipality's
24 standards for facilities.

25 (c) If a municipality has not consented under Subsection (b)
26 before the 180th day after the date the municipality receives the
27 retail public utility's application, the utility commission shall

1 grant the certificate of public convenience and necessity without
2 the consent of the municipality if the utility commission finds
3 that the municipality:

- 4 (1) does not have the ability to provide service; or
- 5 (2) has failed to make a good faith effort to provide
6 service on reasonable terms and conditions.

7 (e) If the utility commission makes a decision under
8 Subsection (d) regarding the grant of a certificate of public
9 convenience and necessity without the consent of the municipality,
10 the municipality or the retail public utility may appeal the
11 decision to the appropriate state district court. The court shall
12 hear the petition within 120 days after the date the petition is
13 filed. On final disposition, the court may award reasonable fees to
14 the prevailing party.

15 (b) If S.B. No. 573, Acts of the 82nd Legislature, Regular
16 Session, 2011, becomes law, Subsections (b), (c), (c-1), (c-2),
17 (c-3), and (e), Section 13.245, Water Code, as effective September
18 1, 2011, are amended to read as follows:

19 (b) Except as provided by Subsections (c), (c-1), and (c-2),
20 the utility commission may not grant to a retail public utility a
21 certificate of public convenience and necessity for a service area
22 within the boundaries or extraterritorial jurisdiction of a
23 municipality without the consent of the municipality. The
24 municipality may not unreasonably withhold the consent. As a
25 condition of the consent, a municipality may require that all water
26 and sewer facilities be designed and constructed in accordance with
27 the municipality's standards for facilities.

1 (c) If a municipality has not consented under Subsection (b)
2 before the 180th day after the date the municipality receives the
3 retail public utility's application, the utility commission shall
4 grant the certificate of public convenience and necessity without
5 the consent of the municipality if the utility commission finds
6 that the municipality:

- 7 (1) does not have the ability to provide service; or
8 (2) has failed to make a good faith effort to provide
9 service on reasonable terms and conditions.

10 (c-1) If a municipality has not consented under Subsection
11 (b) before the 180th day after the date a landowner or a retail
12 public utility submits to the municipality a formal request for
13 service according to the municipality's application requirements
14 and standards for facilities on the same or substantially similar
15 terms as provided by the retail public utility's application to the
16 utility commission, including a capital improvements plan required
17 by Section 13.244(d)(3) or a subdivision plat, the utility
18 commission may grant the certificate of public convenience and
19 necessity without the consent of the municipality if:

20 (1) the utility commission makes the findings required
21 by Subsection (c);

22 (2) the municipality has not entered into a binding
23 commitment to serve the area that is the subject of the retail
24 public utility's application to the utility commission before the
25 180th day after the date the formal request was made; and

26 (3) the landowner or retail public utility that
27 submitted the formal request has not unreasonably refused to:

1 (A) comply with the municipality's service
2 extension and development process; or

3 (B) enter into a contract for water or sewer
4 services with the municipality.

5 (c-2) If a municipality refuses to provide service in the
6 proposed service area, as evidenced by a formal vote of the
7 municipality's governing body or an official notification from the
8 municipality, the utility commission is not required to make the
9 findings otherwise required by this section and may grant the
10 certificate of public convenience and necessity to the retail
11 public utility at any time after the date of the formal vote or
12 receipt of the official notification.

13 (c-3) The utility commission must include as a condition of
14 a certificate of public convenience and necessity granted under
15 Subsection (c-1) or (c-2) that all water and sewer facilities be
16 designed and constructed in accordance with the municipality's
17 standards for water and sewer facilities.

18 (e) If the utility commission makes a decision under
19 Subsection (d) regarding the grant of a certificate of public
20 convenience and necessity without the consent of the municipality,
21 the municipality or the retail public utility may appeal the
22 decision to the appropriate state district court. The court shall
23 hear the petition within 120 days after the date the petition is
24 filed. On final disposition, the court may award reasonable fees to
25 the prevailing party.

26 SECTION 2.35. If S.B. No. 573, Acts of the 82nd Legislature,
27 Regular Session, 2011, becomes law, Subsection (b), Section

1 13.2451, Water Code, as effective September 1, 2011, is amended to
2 read as follows:

3 (b) The utility commission may not extend a municipality's
4 certificate of public convenience and necessity beyond its
5 extraterritorial jurisdiction if an owner of land that is located
6 wholly or partly outside the extraterritorial jurisdiction elects
7 to exclude some or all of the landowner's property within a proposed
8 service area in accordance with Section 13.246(h). This subsection
9 does not apply to a transfer of a certificate as approved by the
10 utility commission.

11 SECTION 2.36. Subsection (c), Section 13.2451, Water Code,
12 is amended to read as follows:

13 (c) The utility commission, after notice to the
14 municipality and an opportunity for a hearing, may decertify an
15 area outside a municipality's extraterritorial jurisdiction if the
16 municipality does not provide service to the area on or before the
17 fifth anniversary of the date the certificate of public convenience
18 and necessity was granted for the area. This subsection does not
19 apply to a certificate of public convenience and necessity for an
20 area:

21 (1) that was transferred to a municipality on approval
22 of the utility commission; and

23 (2) in relation to which the municipality has spent
24 public funds.

25 SECTION 2.37. Subsections (a), (a-1), (b), (c), (d), (f),
26 and (i), Section 13.246, Water Code, are amended to read as follows:

27 (a) If an application for a certificate of public

1 convenience and necessity or for an amendment to a certificate is
2 filed, the utility commission shall cause notice of the application
3 to be given to affected parties and to each county and groundwater
4 conservation district that is wholly or partly included in the area
5 proposed to be certified. If requested, the utility commission
6 shall fix a time and place for a hearing and give notice of the
7 hearing. Any person affected by the application may intervene at
8 the hearing.

9 (a-1) Except as otherwise provided by this subsection, in
10 addition to the notice required by Subsection (a), the utility
11 commission shall require notice to be mailed to each owner of a
12 tract of land that is at least 25 acres and is wholly or partially
13 included in the area proposed to be certified. Notice required
14 under this subsection must be mailed by first class mail to the
15 owner of the tract according to the most current tax appraisal rolls
16 of the applicable central appraisal district at the time the
17 utility commission received the application for the certificate or
18 amendment. Good faith efforts to comply with the requirements of
19 this subsection shall be considered adequate notice to landowners.
20 Notice under this subsection is not required for a matter filed with
21 the utility commission or the commission under:

22 (1) Section 13.248 or 13.255; or

23 (2) Chapter 65.

24 (b) The utility commission may grant applications and issue
25 certificates and amendments to certificates only if the utility
26 commission finds that a certificate or amendment is necessary for
27 the service, accommodation, convenience, or safety of the public.

1 The utility commission may issue a certificate or amendment as
2 requested, or refuse to issue it, or issue it for the construction
3 of only a portion of the contemplated system or facility or
4 extension, or for the partial exercise only of the right or
5 privilege and may impose special conditions necessary to ensure
6 that continuous and adequate service is provided.

7 (c) Certificates of public convenience and necessity and
8 amendments to certificates shall be granted by the utility
9 commission on a nondiscriminatory basis after consideration by the
10 utility commission of:

11 (1) the adequacy of service currently provided to the
12 requested area;

13 (2) the need for additional service in the requested
14 area, including whether any landowners, prospective landowners,
15 tenants, or residents have requested service;

16 (3) the effect of the granting of a certificate or of
17 an amendment on the recipient of the certificate or amendment, on
18 the landowners in the area, and on any retail public utility of the
19 same kind already serving the proximate area;

20 (4) the ability of the applicant to provide adequate
21 service, including meeting the standards of the commission, taking
22 into consideration the current and projected density and land use
23 of the area;

24 (5) the feasibility of obtaining service from an
25 adjacent retail public utility;

26 (6) the financial ability of the applicant to pay for
27 the facilities necessary to provide continuous and adequate service

1 and the financial stability of the applicant, including, if
2 applicable, the adequacy of the applicant's debt-equity ratio;

3 (7) environmental integrity;

4 (8) the probable improvement of service or lowering of
5 cost to consumers in that area resulting from the granting of the
6 certificate or amendment; and

7 (9) the effect on the land to be included in the
8 certificated area.

9 (d) The utility commission may require an applicant for a
10 certificate or for an amendment to provide a bond or other financial
11 assurance in a form and amount specified by the utility commission
12 to ensure that continuous and adequate utility service is provided.

13 (f) If two or more retail public utilities or water supply
14 or sewer service corporations apply for a certificate of public
15 convenience and necessity to provide water or sewer utility service
16 to an uncertificated area located in an economically distressed
17 area and otherwise meet the requirements for obtaining a new
18 certificate, the utility commission shall grant the certificate to
19 the retail public utility or water supply or sewer service
20 corporation that is more capable financially, managerially, and
21 technically of providing continuous and adequate service.

22 (i) A landowner is not entitled to make an election under
23 Subsection (h) but is entitled to contest the inclusion of the
24 landowner's property in the proposed service area at a hearing held
25 by the utility commission regarding the application if the proposed
26 service area is located within the boundaries or extraterritorial
27 jurisdiction of a municipality with a population of more than

1 500,000 and the municipality or a utility owned by the municipality
2 is the applicant.

3 SECTION 2.38. (a) If S.B. No. 573, Acts of the 82nd
4 Legislature, Regular Session, 2011, does not become law, Subsection
5 (h), Section 13.246, Water Code, is amended to read as follows:

6 (h) Except as provided by Subsection (i), a landowner who
7 owns a tract of land that is at least 25 acres and that is wholly or
8 partially located within the proposed service area may elect to
9 exclude some or all of the landowner's property from the proposed
10 service area by providing written notice to the utility commission
11 before the 30th day after the date the landowner receives notice of
12 a new application for a certificate of public convenience and
13 necessity or for an amendment to an existing certificate of public
14 convenience and necessity. The landowner's election is effective
15 without a further hearing or other process by the utility
16 commission. If a landowner makes an election under this
17 subsection, the application shall be modified so that the electing
18 landowner's property is not included in the proposed service area.

19 (b) If S.B. No. 573, Acts of the 82nd Legislature, Regular
20 Session, 2011, becomes law, Subsection (h), Section 13.246, Water
21 Code, as effective September 1, 2011, is amended to read as follows:

22 (h) Except as provided by Subsection (i), a landowner who
23 owns a tract of land that is at least 25 acres and that is wholly or
24 partially located within the proposed service area may elect to
25 exclude some or all of the landowner's property from the proposed
26 service area by providing written notice to the utility commission
27 before the 30th day after the date the landowner receives notice of

1 a new application for a certificate of public convenience and
2 necessity or for an amendment to an existing certificate of public
3 convenience and necessity. The landowner's election is effective
4 without a further hearing or other process by the utility
5 commission. If a landowner makes an election under this
6 subsection, the application shall be modified so that the electing
7 landowner's property is not included in the proposed service area.
8 An applicant for a certificate of public convenience and necessity
9 that has land removed from its proposed certificated service area
10 because of a landowner's election under this subsection may not be
11 required to provide service to the removed land for any reason,
12 including the violation of law or utility commission rules by the
13 water or sewer system of another person.

14 SECTION 2.39. Subsection (a), Section 13.247, Water Code,
15 is amended to read as follows:

16 (a) If an area is within the boundaries of a municipality,
17 all retail public utilities certified or entitled to certification
18 under this chapter to provide service or operate facilities in that
19 area may continue and extend service in its area of public
20 convenience and necessity within the area pursuant to the rights
21 granted by its certificate and this chapter, unless the
22 municipality exercises its power of eminent domain to acquire the
23 property of the retail public utility under Subsection (d). Except
24 as provided by Section 13.255, a municipally owned or operated
25 utility may not provide retail water and sewer utility service
26 within the area certificated to another retail public utility
27 without first having obtained from the utility commission a

1 certificate of public convenience and necessity that includes the
2 areas to be served.

3 SECTION 2.40. Section 13.248, Water Code, is amended to
4 read as follows:

5 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts
6 between retail public utilities designating areas to be served and
7 customers to be served by those retail public utilities, when
8 approved by the utility commission after public notice and hearing,
9 are valid and enforceable and are incorporated into the appropriate
10 areas of public convenience and necessity.

11 SECTION 2.41. Subsections (b), (c), and (e), Section
12 13.250, Water Code, are amended to read as follows:

13 (b) Unless the utility commission issues a certificate that
14 neither the present nor future convenience and necessity will be
15 adversely affected, the holder of a certificate or a person who
16 possesses facilities used to provide utility service shall not
17 discontinue, reduce, or impair service to a certified service area
18 or part of a certified service area except for:

19 (1) nonpayment of charges for services provided by the
20 certificate holder or a person who possesses facilities used to
21 provide utility service;

22 (2) nonpayment of charges for sewer service provided
23 by another retail public utility under an agreement between the
24 retail public utility and the certificate holder or a person who
25 possesses facilities used to provide utility service or under a
26 utility commission-ordered arrangement between the two service
27 providers;

1 (3) nonuse; or

2 (4) other similar reasons in the usual course of
3 business.

4 (c) Any discontinuance, reduction, or impairment of
5 service, whether with or without approval of the utility
6 commission, shall be in conformity with and subject to conditions,
7 restrictions, and limitations that the utility commission
8 prescribes.

9 (e) Not later than the 48th hour after the hour in which a
10 utility files a bankruptcy petition, the utility shall report this
11 fact to the utility commission and the commission in writing.

12 SECTION 2.42. Subsection (d), Section 13.2502, Water Code,
13 is amended to read as follows:

14 (d) This section does not limit or extend the jurisdiction
15 of the utility commission under Section 13.043(g).

16 SECTION 2.43. Section 13.251, Water Code, is amended to
17 read as follows:

18 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.
19 Except as provided by Section 13.255 [~~of this code~~], a utility or a
20 water supply or sewer service corporation may not sell, assign, or
21 lease a certificate of public convenience and necessity or any
22 right obtained under a certificate unless the commission has
23 determined that the purchaser, assignee, or lessee is capable of
24 rendering adequate and continuous service to every consumer within
25 the certified area, after considering the factors under Section
26 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be
27 on the conditions prescribed by the utility commission.

1 SECTION 2.44. Section 13.252, Water Code, is amended to
2 read as follows:

3 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.

4 If a retail public utility in constructing or extending a line,
5 plant, or system interferes or attempts to interfere with the
6 operation of a line, plant, or system of any other retail public
7 utility, or furnishes, makes available, renders, or extends retail
8 water or sewer utility service to any portion of the service area of
9 another retail public utility that has been granted or is not
10 required to possess a certificate of public convenience and
11 necessity, the utility commission may issue an order prohibiting
12 the construction, extension, or provision of service or prescribing
13 terms and conditions for locating the line, plant, or system
14 affected or for the provision of the service.

15 SECTION 2.45. Section 13.253, Water Code, is amended to
16 read as follows:

17 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING
18 SERVICE. (a) After notice and hearing, the utility commission or
19 the commission may:

20 (1) order any retail public utility that is required
21 by law to possess a certificate of public convenience and necessity
22 or any retail public utility that possesses a certificate of public
23 convenience and necessity and is located in an affected county as
24 defined in Section 16.341 to:

25 (A) provide specified improvements in its
26 service in a defined area if service in that area is inadequate or
27 is substantially inferior to service in a comparable area and it is

1 reasonable to require the retail public utility to provide the
2 improved service; or

3 (B) develop, implement, and follow financial,
4 managerial, and technical practices that are acceptable to the
5 utility commission to ensure that continuous and adequate service
6 is provided to any areas currently certificated to the retail
7 public utility if the retail public utility has not provided
8 continuous and adequate service to any of those areas and, for a
9 utility, to provide financial assurance of the utility's ability to
10 operate the system in accordance with applicable laws and rules, in
11 the form of a bond or other financial assurance in a form and amount
12 specified by the utility commission;

13 (2) order two or more public utilities or water supply
14 or sewer service corporations to establish specified facilities for
15 interconnecting service;

16 (3) order a public utility or water supply or sewer
17 service corporation that has not demonstrated that it can provide
18 continuous and adequate service from its drinking water source or
19 sewer treatment facility to obtain service sufficient to meet its
20 obligation to provide continuous and adequate service on at least a
21 wholesale basis from another consenting utility service provider;
22 or

23 (4) issue an emergency order, with or without a
24 hearing, under Section 13.041.

25 (b) If the utility commission has reason to believe that
26 improvements and repairs to a water or sewer service system are
27 necessary to enable a retail public utility to provide continuous

1 and adequate service in any portion of its service area and the
2 retail public utility has provided financial assurance under
3 Section 341.0355, Health and Safety Code, or under this chapter,
4 the utility commission, after providing to the retail public
5 utility notice and an opportunity to be heard by the commissioners
6 at a [~~commission~~] meeting of the utility commission, may
7 immediately order specified improvements and repairs to the water
8 or sewer system, the costs of which may be paid by the bond or other
9 financial assurance in an amount determined by the utility
10 commission not to exceed the amount of the bond or financial
11 assurance. The order requiring the improvements may be an
12 emergency order if it is issued after the retail public utility has
13 had an opportunity to be heard [~~by the commissioners~~] at a
14 [~~commission~~] meeting of the utility commission. After notice and
15 hearing, the utility commission may require a retail public utility
16 to obligate additional money to replace the financial assurance
17 used for the improvements.

18 SECTION 2.46. (a) If S.B. No. 573, Acts of the 82nd
19 Legislature, Regular Session, 2011, does not become law, Section
20 13.254, Water Code, is amended to read as follows:

21 Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE.

22 (a) The utility commission at any time after notice and hearing
23 may, on its own motion or on receipt of a petition described by
24 Subsection (a-1), revoke or amend any certificate of public
25 convenience and necessity with the written consent of the
26 certificate holder or if the utility commission [~~it~~] finds that:

27 (1) the certificate holder has never provided, is no

1 longer providing, is incapable of providing, or has failed to
2 provide continuous and adequate service in the area, or part of the
3 area, covered by the certificate;

4 (2) in an affected county as defined in Section
5 16.341, the cost of providing service by the certificate holder is
6 so prohibitively expensive as to constitute denial of service,
7 provided that, for commercial developments or for residential
8 developments started after September 1, 1997, in an affected county
9 as defined in Section 16.341, the fact that the cost of obtaining
10 service from the currently certificated retail public utility makes
11 the development economically unfeasible does not render such cost
12 prohibitively expensive in the absence of other relevant factors;

13 (3) the certificate holder has agreed in writing to
14 allow another retail public utility to provide service within its
15 service area, except for an interim period, without amending its
16 certificate; or

17 (4) the certificate holder has failed to file a cease
18 and desist action pursuant to Section 13.252 within 180 days of the
19 date that it became aware that another retail public utility was
20 providing service within its service area, unless the certificate
21 holder demonstrates good cause for its failure to file such action
22 within the 180 days.

23 (a-1) As an alternative to decertification under Subsection
24 (a), the owner of a tract of land that is at least 50 acres and that
25 is not in a platted subdivision actually receiving water or sewer
26 service may petition the utility commission under this subsection
27 for expedited release of the area from a certificate of public

1 convenience and necessity so that the area may receive service from
2 another retail public utility. The petitioner shall deliver, via
3 certified mail, a copy of the petition to the certificate holder,
4 who may submit information to the utility commission to controvert
5 information submitted by the petitioner. The petitioner must
6 demonstrate that:

7 (1) a written request for service, other than a
8 request for standard residential or commercial service, has been
9 submitted to the certificate holder, identifying:

10 (A) the area for which service is sought;

11 (B) the timeframe within which service is needed
12 for current and projected service demands in the area;

13 (C) the level and manner of service needed for
14 current and projected service demands in the area; and

15 (D) any additional information requested by the
16 certificate holder that is reasonably related to determination of
17 the capacity or cost for providing the service;

18 (2) the certificate holder has been allowed at least
19 90 calendar days to review and respond to the written request and
20 the information it contains;

21 (3) the certificate holder:

22 (A) has refused to provide the service;

23 (B) is not capable of providing the service on a
24 continuous and adequate basis within the timeframe, at the level,
25 or in the manner reasonably needed or requested by current and
26 projected service demands in the area; or

27 (C) conditions the provision of service on the

1 payment of costs not properly allocable directly to the
2 petitioner's service request, as determined by the utility
3 commission; and

4 (4) the alternate retail public utility from which the
5 petitioner will be requesting service is capable of providing
6 continuous and adequate service within the timeframe, at the level,
7 and in the manner reasonably needed or requested by current and
8 projected service demands in the area.

9 (a-2) A landowner is not entitled to make the election
10 described in Subsection (a-1) but is entitled to contest the
11 involuntary certification of its property in a hearing held by the
12 utility commission if the landowner's property is located:

13 (1) within the boundaries of any municipality or the
14 extraterritorial jurisdiction of a municipality with a population
15 of more than 500,000 and the municipality or retail public utility
16 owned by the municipality is the holder of the certificate; or

17 (2) in a platted subdivision actually receiving water
18 or sewer service.

19 (a-3) Within 90 calendar days from the date the utility
20 commission determines the petition filed pursuant to Subsection
21 (a-1) to be administratively complete, the utility commission shall
22 grant the petition unless the utility commission makes an express
23 finding that the petitioner failed to satisfy the elements required
24 in Subsection (a-1) and supports its finding with separate findings
25 and conclusions for each element based solely on the information
26 provided by the petitioner and the certificate holder. The utility
27 commission may grant or deny a petition subject to terms and

1 conditions specifically related to the service request of the
2 petitioner and all relevant information submitted by the petitioner
3 and the certificate holder. In addition, the utility commission
4 may require an award of compensation as otherwise provided by this
5 section.

6 (a-4) Chapter 2001, Government Code, does not apply to any
7 petition filed under Subsection (a-1). The decision of the utility
8 commission on the petition is final after any reconsideration
9 authorized by the utility commission's rules and may not be
10 appealed.

11 (b) Upon written request from the certificate holder, the
12 utility commission [~~executive director~~] may cancel the certificate
13 of a utility or water supply corporation authorized by rule to
14 operate without a certificate of public convenience and necessity
15 under Section 13.242(c).

16 (c) If the certificate of any retail public utility is
17 revoked or amended, the utility commission may require one or more
18 retail public utilities with their consent to provide service in
19 the area in question. The order of the utility commission shall not
20 be effective to transfer property.

21 (d) A retail public utility may not in any way render retail
22 water or sewer service directly or indirectly to the public in an
23 area that has been decertified under this section without providing
24 compensation for any property that the utility commission
25 determines is rendered useless or valueless to the decertified
26 retail public utility as a result of the decertification.

27 (e) The determination of the monetary amount of

1 compensation, if any, shall be determined at the time another
2 retail public utility seeks to provide service in the previously
3 decertified area and before service is actually provided. The
4 utility commission shall ensure that the monetary amount of
5 compensation is determined not later than the 90th calendar day
6 after the date on which a retail public utility notifies the utility
7 commission of its intent to provide service to the decertified
8 area.

9 (f) The monetary amount shall be determined by a qualified
10 individual or firm serving as independent appraiser agreed upon by
11 the decertified retail public utility and the retail public utility
12 seeking to serve the area. The determination of compensation by the
13 independent appraiser shall be binding on the utility commission.
14 The costs of the independent appraiser shall be borne by the retail
15 public utility seeking to serve the area.

16 (g) For the purpose of implementing this section, the value
17 of real property owned and utilized by the retail public utility for
18 its facilities shall be determined according to the standards set
19 forth in Chapter 21, Property Code, governing actions in eminent
20 domain and the value of personal property shall be determined
21 according to the factors in this subsection. The factors ensuring
22 that the compensation to a retail public utility is just and
23 adequate shall include: the amount of the retail public utility's
24 debt allocable for service to the area in question; the value of the
25 service facilities of the retail public utility located within the
26 area in question; the amount of any expenditures for planning,
27 design, or construction of service facilities that are allocable to

1 service to the area in question; the amount of the retail public
2 utility's contractual obligations allocable to the area in
3 question; any demonstrated impairment of service or increase of
4 cost to consumers of the retail public utility remaining after the
5 decertification; the impact on future revenues lost from existing
6 customers; necessary and reasonable legal expenses and
7 professional fees; and other relevant factors. The utility
8 commission shall adopt rules governing the evaluation of these
9 factors.

10 (g-1) If the retail public utilities cannot agree on an
11 independent appraiser within 10 calendar days after the date on
12 which the retail public utility notifies the utility commission of
13 its intent to provide service to the decertified area, each retail
14 public utility shall engage its own appraiser at its own expense,
15 and each appraisal shall be submitted to the utility commission
16 within 60 calendar days. After receiving the appraisals, the
17 utility commission shall appoint a third appraiser who shall make a
18 determination of the compensation within 30 days. The
19 determination may not be less than the lower appraisal or more than
20 the higher appraisal. Each retail public utility shall pay half the
21 cost of the third appraisal.

22 (b) If S.B. No. 573, Acts of the 82nd Legislature, Regular
23 Session, 2011, becomes law, Subsections (a), (a-1), (a-2), (a-3),
24 (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Section
25 13.254, Water Code, as effective September 1, 2011, are amended to
26 read as follows:

27 (a) The utility commission at any time after notice and

1 hearing may revoke or amend any certificate of public convenience
2 and necessity with the written consent of the certificate holder or
3 if it finds that:

4 (1) the certificate holder has never provided, is no
5 longer providing, is incapable of providing, or has failed to
6 provide continuous and adequate service in the area, or part of the
7 area, covered by the certificate;

8 (2) in an affected county as defined in Section
9 16.341, the cost of providing service by the certificate holder is
10 so prohibitively expensive as to constitute denial of service,
11 provided that, for commercial developments or for residential
12 developments started after September 1, 1997, in an affected county
13 as defined in Section 16.341, the fact that the cost of obtaining
14 service from the currently certificated retail public utility makes
15 the development economically unfeasible does not render such cost
16 prohibitively expensive in the absence of other relevant factors;

17 (3) the certificate holder has agreed in writing to
18 allow another retail public utility to provide service within its
19 service area, except for an interim period, without amending its
20 certificate; or

21 (4) the certificate holder has failed to file a cease
22 and desist action pursuant to Section 13.252 within 180 days of the
23 date that it became aware that another retail public utility was
24 providing service within its service area, unless the certificate
25 holder demonstrates good cause for its failure to file such action
26 within the 180 days.

27 (a-1) As an alternative to decertification under Subsection

1 (a), the owner of a tract of land that is at least 50 acres and that
2 is not in a platted subdivision actually receiving water or sewer
3 service may petition the utility commission under this subsection
4 for expedited release of the area from a certificate of public
5 convenience and necessity so that the area may receive service from
6 another retail public utility. The fact that a certificate holder
7 is a borrower under a federal loan program is not a bar to a request
8 under this subsection for the release of the petitioner's land and
9 the receipt of services from an alternative provider. On the day
10 the petitioner submits the petition to the utility commission, the
11 petitioner shall send, via certified mail, a copy of the petition to
12 the certificate holder, who may submit information to the utility
13 commission to controvert information submitted by the petitioner.
14 The petitioner must demonstrate that:

15 (1) a written request for service, other than a
16 request for standard residential or commercial service, has been
17 submitted to the certificate holder, identifying:

18 (A) the area for which service is sought;

19 (B) the timeframe within which service is needed
20 for current and projected service demands in the area;

21 (C) the level and manner of service needed for
22 current and projected service demands in the area;

23 (D) the approximate cost for the alternative
24 provider to provide the service at the same level and manner that is
25 requested from the certificate holder;

26 (E) the flow and pressure requirements and
27 specific infrastructure needs, including line size and system

1 capacity for the required level of fire protection requested; and

2 (F) any additional information requested by the
3 certificate holder that is reasonably related to determination of
4 the capacity or cost for providing the service;

5 (2) the certificate holder has been allowed at least
6 90 calendar days to review and respond to the written request and
7 the information it contains;

8 (3) the certificate holder:

9 (A) has refused to provide the service;

10 (B) is not capable of providing the service on a
11 continuous and adequate basis within the timeframe, at the level,
12 at the approximate cost that the alternative provider is capable of
13 providing for a comparable level of service, or in the manner
14 reasonably needed or requested by current and projected service
15 demands in the area; or

16 (C) conditions the provision of service on the
17 payment of costs not properly allocable directly to the
18 petitioner's service request, as determined by the utility
19 commission; and

20 (4) the alternate retail public utility from which the
21 petitioner will be requesting service possesses the financial,
22 managerial, and technical capability to provide continuous and
23 adequate service within the timeframe, at the level, at the cost,
24 and in the manner reasonably needed or requested by current and
25 projected service demands in the area.

26 (a-2) A landowner is not entitled to make the election
27 described in Subsection (a-1) or (a-5) but is entitled to contest

1 under Subsection (a) the involuntary certification of its property
2 in a hearing held by the utility commission if the landowner's
3 property is located:

4 (1) within the boundaries of any municipality or the
5 extraterritorial jurisdiction of a municipality with a population
6 of more than 500,000 and the municipality or retail public utility
7 owned by the municipality is the holder of the certificate; or

8 (2) in a platted subdivision actually receiving water
9 or sewer service.

10 (a-3) Within 60 calendar days from the date the utility
11 commission determines the petition filed pursuant to Subsection
12 (a-1) to be administratively complete, the utility commission shall
13 grant the petition unless the utility commission makes an express
14 finding that the petitioner failed to satisfy the elements required
15 in Subsection (a-1) and supports its finding with separate findings
16 and conclusions for each element based solely on the information
17 provided by the petitioner and the certificate holder. The utility
18 commission may grant or deny a petition subject to terms and
19 conditions specifically related to the service request of the
20 petitioner and all relevant information submitted by the petitioner
21 and the certificate holder. In addition, the utility commission
22 may require an award of compensation as otherwise provided by this
23 section.

24 (a-6) The utility commission shall grant a petition
25 received under Subsection (a-5) not later than the 60th day after
26 the date the landowner files the petition. The utility commission
27 may not deny a petition received under Subsection (a-5) based on the

1 fact that a certificate holder is a borrower under a federal loan
2 program. The utility commission may require an award of
3 compensation by the petitioner to a decertified retail public
4 utility that is the subject of a petition filed under Subsection
5 (a-5) as otherwise provided by this section.

6 (a-8) If a certificate holder has never made service
7 available through planning, design, construction of facilities, or
8 contractual obligations to serve the area a petitioner seeks to
9 have released under Subsection (a-1), the utility commission is not
10 required to find that the proposed alternative provider is capable
11 of providing better service than the certificate holder, but only
12 that the proposed alternative provider is capable of providing the
13 requested service.

14 (b) Upon written request from the certificate holder, the
15 utility commission [~~executive director~~] may cancel the certificate
16 of a utility or water supply corporation authorized by rule to
17 operate without a certificate of public convenience and necessity
18 under Section 13.242(c).

19 (c) If the certificate of any retail public utility is
20 revoked or amended, the utility commission may require one or more
21 retail public utilities with their consent to provide service in
22 the area in question. The order of the utility commission shall not
23 be effective to transfer property.

24 (d) A retail public utility may not in any way render retail
25 water or sewer service directly or indirectly to the public in an
26 area that has been decertified under this section without providing
27 compensation for any property that the utility commission

1 determines is rendered useless or valueless to the decertified
2 retail public utility as a result of the decertification.

3 (e) The determination of the monetary amount of
4 compensation, if any, shall be determined at the time another
5 retail public utility seeks to provide service in the previously
6 decertified area and before service is actually provided. The
7 utility commission shall ensure that the monetary amount of
8 compensation is determined not later than the 90th calendar day
9 after the date on which a retail public utility notifies the utility
10 commission of its intent to provide service to the decertified
11 area.

12 (f) The monetary amount shall be determined by a qualified
13 individual or firm serving as independent appraiser agreed upon by
14 the decertified retail public utility and the retail public utility
15 seeking to serve the area. The determination of compensation by the
16 independent appraiser shall be binding on the utility commission.
17 The costs of the independent appraiser shall be borne by the retail
18 public utility seeking to serve the area.

19 (g) For the purpose of implementing this section, the value
20 of real property owned and utilized by the retail public utility for
21 its facilities shall be determined according to the standards set
22 forth in Chapter 21, Property Code, governing actions in eminent
23 domain and the value of personal property shall be determined
24 according to the factors in this subsection. The factors ensuring
25 that the compensation to a retail public utility is just and
26 adequate shall include: the amount of the retail public utility's
27 debt allocable for service to the area in question; the value of the

1 service facilities of the retail public utility located within the
2 area in question; the amount of any expenditures for planning,
3 design, or construction of service facilities that are allocable to
4 service to the area in question; the amount of the retail public
5 utility's contractual obligations allocable to the area in
6 question; any demonstrated impairment of service or increase of
7 cost to consumers of the retail public utility remaining after the
8 decertification; the impact on future revenues lost from existing
9 customers; necessary and reasonable legal expenses and
10 professional fees; and other relevant factors. The utility
11 commission shall adopt rules governing the evaluation of these
12 factors.

13 (g-1) If the retail public utilities cannot agree on an
14 independent appraiser within 10 calendar days after the date on
15 which the retail public utility notifies the utility commission of
16 its intent to provide service to the decertified area, each retail
17 public utility shall engage its own appraiser at its own expense,
18 and each appraisal shall be submitted to the utility commission
19 within 60 calendar days. After receiving the appraisals, the
20 utility commission shall appoint a third appraiser who shall make a
21 determination of the compensation within 30 days. The
22 determination may not be less than the lower appraisal or more than
23 the higher appraisal. Each retail public utility shall pay half the
24 cost of the third appraisal.

25 (h) A certificate holder that has land removed from its
26 certificated service area in accordance with this section may not
27 be required, after the land is removed, to provide service to the

1 removed land for any reason, including the violation of law or
2 utility commission rules by a water or sewer system of another
3 person.

4 SECTION 2.47. Subsections (a), (b), (c), (d), (e), (g-1),
5 (k), (l), and (m), Section 13.255, Water Code, are amended to read
6 as follows:

7 (a) In the event that an area is incorporated or annexed by a
8 municipality, either before or after the effective date of this
9 section, the municipality and a retail public utility that provides
10 water or sewer service to all or part of the area pursuant to a
11 certificate of convenience and necessity may agree in writing that
12 all or part of the area may be served by a municipally owned
13 utility, by a franchised utility, or by the retail public utility.
14 In this section, the phrase "franchised utility" shall mean a
15 retail public utility that has been granted a franchise by a
16 municipality to provide water or sewer service inside municipal
17 boundaries. The agreement may provide for single or dual
18 certification of all or part of the area, for the purchase of
19 facilities or property, and for such other or additional terms that
20 the parties may agree on. If a franchised utility is to serve the
21 area, the franchised utility shall also be a party to the agreement.
22 The executed agreement shall be filed with the utility commission,
23 and the utility commission, on receipt of the agreement, shall
24 incorporate the terms of the agreement into the respective
25 certificates of convenience and necessity of the parties to the
26 agreement.

27 (b) If an agreement is not executed within 180 days after

1 the municipality, in writing, notifies the retail public utility of
2 its intent to provide service to the incorporated or annexed area,
3 and if the municipality desires and intends to provide retail
4 utility service to the area, the municipality, prior to providing
5 service to the area, shall file an application with the utility
6 commission to grant single certification to the municipally owned
7 water or sewer utility or to a franchised utility. If an
8 application for single certification is filed, the utility
9 commission shall fix a time and place for a hearing and give notice
10 of the hearing to the municipality and franchised utility, if any,
11 and notice of the application and hearing to the retail public
12 utility.

13 (c) The utility commission shall grant single certification
14 to the municipality. The utility commission shall also determine
15 whether single certification as requested by the municipality would
16 result in property of a retail public utility being rendered
17 useless or valueless to the retail public utility, and shall
18 determine in its order the monetary amount that is adequate and just
19 to compensate the retail public utility for such property. If the
20 municipality in its application has requested the transfer of
21 specified property of the retail public utility to the municipality
22 or to a franchised utility, the utility commission shall also
23 determine in its order the adequate and just compensation to be paid
24 for such property pursuant to the provisions of this section,
25 including an award for damages to property remaining in the
26 ownership of the retail public utility after single certification.
27 The order of the utility commission shall not be effective to

1 transfer property. A transfer of property may only be obtained
2 under this section by a court judgment rendered pursuant to
3 Subsection (d) or (e) [~~of this section~~]. The grant of single
4 certification by the utility commission shall go into effect on the
5 date the municipality or franchised utility, as the case may be,
6 pays adequate and just compensation pursuant to court order, or
7 pays an amount into the registry of the court or to the retail
8 public utility under Subsection (f). If the court judgment
9 provides that the retail public utility is not entitled to any
10 compensation, the grant of single certification shall go into
11 effect when the court judgment becomes final. The municipality or
12 franchised utility must provide to each customer of the retail
13 public utility being acquired an individual written notice within
14 60 days after the effective date for the transfer specified in the
15 court judgment. The notice must clearly advise the customer of the
16 identity of the new service provider, the reason for the transfer,
17 the rates to be charged by the new service provider, and the
18 effective date of those rates.

19 (d) In the event the final order of the utility commission
20 is not appealed within 30 days, the municipality may request the
21 district court of Travis County to enter a judgment consistent with
22 the order of the utility commission. In such event, the court shall
23 render a judgment that:

24 (1) transfers to the municipally owned utility or
25 franchised utility title to property to be transferred to the
26 municipally owned utility or franchised utility as delineated by
27 the utility commission's final order and property determined by the

1 utility commission to be rendered useless or valueless by the
2 granting of single certification; and

3 (2) orders payment to the retail public utility of
4 adequate and just compensation for the property as determined by
5 the utility commission in its final order.

6 (e) Any party that is aggrieved by a final order of the
7 utility commission under this section may file an appeal with the
8 district court of Travis County within 30 days after the order
9 becomes final. The hearing in such an appeal before the district
10 court shall be by trial de novo on all issues. After the hearing, if
11 the court determines that the municipally owned utility or
12 franchised utility is entitled to single certification under the
13 provisions of this section, the court shall enter a judgment that:

14 (1) transfers to the municipally owned utility or
15 franchised utility title to property requested by the municipality
16 to be transferred to the municipally owned utility or franchised
17 utility and located within the singly certificated area and
18 property determined by the court or jury to be rendered useless or
19 valueless by the granting of single certification; and

20 (2) orders payment in accordance with Subsection (g)
21 [~~of this section~~] to the retail public utility of adequate and just
22 compensation for the property transferred and for the property
23 damaged as determined by the court or jury.

24 (g-1) The utility commission shall adopt rules governing
25 the evaluation of the factors to be considered in determining the
26 monetary compensation under Subsection (g). The utility commission
27 by rule shall adopt procedures to ensure that the total

1 compensation to be paid to a retail public utility under Subsection
2 (g) is determined not later than the 90th calendar day after the
3 date on which the utility commission determines that the
4 municipality's application is administratively complete.

5 (k) The following conditions apply when a municipality or
6 franchised utility makes an application to acquire the service area
7 or facilities of a retail public utility described in Subsection
8 (j)(2):

9 (1) the utility commission or court must determine
10 that the service provided by the retail public utility is
11 substandard or its rates are unreasonable in view of the reasonable
12 expenses of the utility;

13 (2) if the municipality abandons its application, the
14 court or the utility commission is authorized to award to the retail
15 public utility its reasonable expenses related to the proceeding
16 hereunder, including attorney fees; and

17 (3) unless otherwise agreed by the retail public
18 utility, the municipality must take the entire utility property of
19 the retail public utility in a proceeding hereunder.

20 (1) For an area incorporated by a municipality, the
21 compensation provided under Subsection (g) shall be determined by a
22 qualified individual or firm to serve as independent appraiser, who
23 shall be selected by the affected retail public utility, and the
24 costs of the appraiser shall be paid by the municipality. For an
25 area annexed by a municipality, the compensation provided under
26 Subsection (g) shall be determined by a qualified individual or
27 firm to which the municipality and the retail public utility agree

1 to serve as independent appraiser. If the retail public utility and
2 the municipality are unable to agree on a single individual or firm
3 to serve as the independent appraiser before the 11th day after the
4 date the retail public utility or municipality notifies the other
5 party of the impasse, the retail public utility and municipality
6 each shall appoint a qualified individual or firm to serve as
7 independent appraiser. On or before the 10th business day after the
8 date of their appointment, the independent appraisers shall meet to
9 reach an agreed determination of the amount of compensation. If the
10 appraisers are unable to agree on a determination before the 16th
11 business day after the date of their first meeting under this
12 subsection, the retail public utility or municipality may petition
13 the utility commission or a person the utility commission
14 designates for the purpose to appoint a third qualified independent
15 appraiser to reconcile the appraisals of the two originally
16 appointed appraisers. The determination of the third appraiser may
17 not be less than the lesser or more than the greater of the two
18 original appraisals. The costs of the independent appraisers for
19 an annexed area shall be shared equally by the retail public utility
20 and the municipality. The determination of compensation under this
21 subsection is binding on the utility commission.

22 (m) The utility commission shall deny an application for
23 single certification by a municipality that fails to demonstrate
24 compliance with the commission's minimum requirements for public
25 drinking water systems.

26 SECTION 2.48. Section 13.2551, Water Code, is amended to
27 read as follows:

1 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
2 condition to decertification or single certification under Section
3 13.254 or 13.255, and on request by an affected retail public
4 utility, the utility commission may order:

5 (1) the retail public utility seeking to provide
6 service to a decertified area to serve the entire service area of
7 the retail public utility that is being decertified; and

8 (2) the transfer of the entire certificate of public
9 convenience and necessity of a partially decertified retail public
10 utility to the retail public utility seeking to provide service to
11 the decertified area.

12 (b) The utility commission shall order service to the entire
13 area under Subsection (a) if the utility commission finds that the
14 decertified retail public utility will be unable to provide
15 continuous and adequate service at an affordable cost to the
16 remaining customers.

17 (c) The utility commission shall require the retail public
18 utility seeking to provide service to the decertified area to
19 provide continuous and adequate service to the remaining customers
20 at a cost comparable to the cost of that service to its other
21 customers and shall establish the terms under which the service
22 must be provided. The terms may include:

23 (1) transferring debt and other contract obligations;

24 (2) transferring real and personal property;

25 (3) establishing interim service rates for affected
26 customers during specified times; and

27 (4) other provisions necessary for the just and

1 reasonable allocation of assets and liabilities.

2 (d) The retail public utility seeking decertification shall
3 not charge the affected customers any transfer fee or other fee to
4 obtain service other than the retail public utility's usual and
5 customary rates for monthly service or the interim rates set by the
6 utility commission, if applicable.

7 (e) The utility commission shall not order compensation to
8 the decertificated retail utility if service to the entire service
9 area is ordered under this section.

10 SECTION 2.49. Subsections (e), (i), (r), and (s), Section
11 13.257, Water Code, are amended to read as follows:

12 (e) The notice must be given to the prospective purchaser
13 before the execution of a binding contract of purchase and sale.
14 The notice may be given separately or as an addendum to or paragraph
15 of the contract. If the seller fails to provide the notice required
16 by this section, the purchaser may terminate the contract. If the
17 seller provides the notice at or before the closing of the purchase
18 and sale contract and the purchaser elects to close even though the
19 notice was not timely provided before the execution of the
20 contract, it is conclusively presumed that the purchaser has waived
21 all rights to terminate the contract and recover damages or pursue
22 other remedies or rights under this section. Notwithstanding any
23 provision of this section to the contrary, a seller, title
24 insurance company, real estate broker, or examining attorney, or an
25 agent, representative, or person acting on behalf of the seller,
26 company, broker, or attorney, is not liable for damages under
27 Subsection (m) or (n) or liable for any other damages to any person

1 for:

2 (1) failing to provide the notice required by this
3 section to a purchaser before the execution of a binding contract of
4 purchase and sale or at or before the closing of the purchase and
5 sale contract if:

6 (A) the utility service provider did not file the
7 map of the certificated service area in the real property records of
8 the county in which the service area is located and with the utility
9 commission depicting the boundaries of the service area of the
10 utility service provider as shown in the real property records of
11 the county in which the service area is located; and

12 (B) the utility commission did not maintain an
13 accurate map of the certificated service area of the utility
14 service provider as required by this chapter; or

15 (2) unintentionally providing a notice required by
16 this section that is incorrect under the circumstances before the
17 execution of a binding contract of purchase and sale or at or before
18 the closing of the purchase and sale contract.

19 (i) If the notice is given at closing as provided by
20 Subsection (g), a purchaser, or the purchaser's heirs, successors,
21 or assigns, may not maintain an action for damages or maintain an
22 action against a seller, title insurance company, real estate
23 broker, or lienholder, or any agent, representative, or person
24 acting on behalf of the seller, company, broker, or lienholder, by
25 reason of the seller's use of the information filed with the utility
26 commission by the utility service provider or the seller's use of
27 the map of the certificated service area of the utility service

1 provider filed in the real property records to determine whether
2 the property to be purchased is within the certificated service
3 area of the utility service provider. An action may not be
4 maintained against a title insurance company for the failure to
5 disclose that the described real property is included within the
6 certificated service area of a utility service provider if the
7 utility service provider did not file in the real property records
8 or with the utility commission the map of the certificated service
9 area.

10 (r) A utility service provider shall:

11 (1) record in the real property records of each county
12 in which the service area or a portion of the service area is
13 located a certified copy of the map of the certificate of public
14 convenience and necessity and of any amendment to the certificate
15 as contained in the utility commission's records, and a boundary
16 description of the service area by:

17 (A) a metes and bounds survey certified by a
18 licensed state land surveyor or a registered professional land
19 surveyor;

20 (B) the Texas State Plane Coordinate System;

21 (C) verifiable landmarks, including a road,
22 creek, or railroad line; or

23 (D) if a recorded plat of the area exists, lot and
24 block number; and

25 (2) submit to the executive director of the utility
26 commission evidence of the recording.

27 (s) Each county shall accept and file in its real property

1 records a utility service provider's map presented to the county
2 clerk under this section if the map meets filing requirements, does
3 not exceed 11 inches by 17 inches in size, and is accompanied by the
4 appropriate fee. The recording required by this section must be
5 completed not later than the 31st day after the date a utility
6 service provider receives a final order from the utility commission
7 granting an application for a new certificate or for an amendment to
8 a certificate that results in a change in the utility service
9 provider's service area.

10 SECTION 2.50. Subsections (a) through (g), Section 13.301,
11 Water Code, are amended to read as follows:

12 (a) A utility or a water supply or sewer service
13 corporation, on or before the 120th day before the effective date of
14 a sale, acquisition, lease, or rental of a water or sewer system
15 that is required by law to possess a certificate of public
16 convenience and necessity or the effective date of a merger or
17 consolidation with such a utility or water supply or sewer service
18 corporation, shall:

19 (1) file a written application with the utility
20 commission; and

21 (2) unless public notice is waived by the executive
22 director of the utility commission for good cause shown, give
23 public notice of the action.

24 (b) The utility commission may require that the person
25 purchasing or acquiring the water or sewer system demonstrate
26 adequate financial, managerial, and technical capability for
27 providing continuous and adequate service to the requested area and

1 any areas currently certificated to the person.

2 (c) If the person purchasing or acquiring the water or sewer
3 system cannot demonstrate adequate financial capability, the
4 utility commission may require that the person provide a bond or
5 other financial assurance in a form and amount specified by the
6 utility commission to ensure continuous and adequate utility
7 service is provided.

8 (d) The utility commission shall, with or without a public
9 hearing, investigate the sale, acquisition, lease, or rental to
10 determine whether the transaction will serve the public interest.

11 (e) Before the expiration of the 120-day notification
12 period, the executive director of the utility commission shall
13 notify all known parties to the transaction and the Office of Public
14 Utility Counsel whether ~~[of]~~ the executive director of the utility
15 commission will ~~[director's decision whether to]~~ request that the
16 utility commission hold a public hearing to determine if the
17 transaction will serve the public interest. The executive director
18 of the utility commission may request a hearing if:

19 (1) the application filed with the utility commission
20 or the public notice was improper;

21 (2) the person purchasing or acquiring the water or
22 sewer system has not demonstrated adequate financial, managerial,
23 and technical capability for providing continuous and adequate
24 service to the service area being acquired and to any areas
25 currently certificated to the person;

26 (3) the person or an affiliated interest of the person
27 purchasing or acquiring the water or sewer system has a history of:

1 (A) noncompliance with the requirements of the
2 utility commission, the commission, or the [~~Texas~~] Department of
3 State Health Services; or

4 (B) continuing mismanagement or misuse of
5 revenues as a utility service provider;

6 (4) the person purchasing or acquiring the water or
7 sewer system cannot demonstrate the financial ability to provide
8 the necessary capital investment to ensure the provision of
9 continuous and adequate service to the customers of the water or
10 sewer system; or

11 (5) there are concerns that the transaction may not
12 serve the public interest, after the application of the
13 considerations provided by Section 13.246(c) for determining
14 whether to grant a certificate of convenience and necessity.

15 (f) Unless the executive director of the utility commission
16 requests that a public hearing be held, the sale, acquisition,
17 lease, or rental may be completed as proposed:

18 (1) at the end of the 120-day period; or

19 (2) at any time after the executive director of the
20 utility commission notifies the utility or water supply or sewer
21 service corporation that a hearing will not be requested.

22 (g) If a hearing is requested or if the utility or water
23 supply or sewer service corporation fails to make the application
24 as required or to provide public notice, the sale, acquisition,
25 lease, or rental may not be completed unless the utility commission
26 determines that the proposed transaction serves the public
27 interest.

1 SECTION 2.51. Section 13.302, Water Code, is amended to
2 read as follows:

3 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC
4 UTILITY: REPORT. (a) A utility may not purchase voting stock in
5 another utility doing business in this state and a person may not
6 acquire a controlling interest in a utility doing business in this
7 state unless the person or utility files a written application with
8 the utility commission not later than the 61st day before the date
9 on which the transaction is to occur.

10 (b) The utility commission may require that a person
11 acquiring a controlling interest in a utility demonstrate adequate
12 financial, managerial, and technical capability for providing
13 continuous and adequate service to the requested area and any areas
14 currently certificated to the person.

15 (c) If the person acquiring a controlling interest cannot
16 demonstrate adequate financial capability, the utility commission
17 may require that the person provide a bond or other financial
18 assurance in a form and amount specified by the utility commission
19 to ensure continuous and adequate utility service is provided.

20 (d) The executive director of the utility commission may
21 request that the utility commission hold a public hearing on the
22 transaction if the executive director of the utility commission
23 believes that a criterion prescribed by Section 13.301(e) applies.

24 (e) Unless the executive director of the utility commission
25 requests that a public hearing be held, the purchase or acquisition
26 may be completed as proposed:

27 (1) at the end of the 60-day period; or

1 (2) at any time after the executive director of the
2 utility commission notifies the person or utility that a hearing
3 will not be requested.

4 (f) If a hearing is requested or if the person or utility
5 fails to make the application to the utility commission as
6 required, the purchase or acquisition may not be completed unless
7 the utility commission determines that the proposed transaction
8 serves the public interest. A purchase or acquisition that is not
9 completed in accordance with the provisions of this section is
10 void.

11 SECTION 2.52. Section 13.303, Water Code, is amended to
12 read as follows:

13 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may
14 not loan money, stocks, bonds, notes, or other evidences of
15 indebtedness to any corporation or person owning or holding
16 directly or indirectly any stock of the utility unless the utility
17 reports the transaction to the utility commission within 60 days
18 after the date of the transaction.

19 SECTION 2.53. Section 13.304, Water Code, is amended to
20 read as follows:

21 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that
22 receives notice that all or a portion of the utility's facilities or
23 property used to provide utility service are being posted for
24 foreclosure shall notify the utility commission and the commission
25 in writing of that fact not later than the 10th day after the date on
26 which the utility receives the notice.

27 (b) A financial institution that forecloses on a utility or

1 on any part of the utility's facilities or property that are used to
2 provide utility service is not required to provide the 120-day
3 notice prescribed by Section 13.301, but shall provide written
4 notice to the utility commission and the commission before the 30th
5 day preceding the date on which the foreclosure is completed.

6 (c) The financial institution may operate the utility for an
7 interim period prescribed by utility commission rule before
8 transferring or otherwise obtaining a certificate of convenience
9 and necessity. A financial institution that operates a utility
10 during an interim period under this subsection is subject to each
11 utility commission rule to which the utility was subject and in the
12 same manner.

13 SECTION 2.54. Section 13.341, Water Code, is amended to
14 read as follows:

15 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The
16 utility commission has jurisdiction over affiliated interests
17 having transactions with utilities under the jurisdiction of the
18 utility commission to the extent of access to all accounts and
19 records of those affiliated interests relating to such
20 transactions, including but in no way limited to accounts and
21 records of joint or general expenses, any portion of which may be
22 applicable to those transactions.

23 SECTION 2.55. Section 13.342, Water Code, is amended to
24 read as follows:

25 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING
26 SECURITIES. The utility commission may require the disclosure of
27 the identity and respective interests of every owner of any

1 substantial interest in the voting securities of any utility or its
2 affiliated interest. One percent or more is a substantial interest
3 within the meaning of this section.

4 SECTION 2.56. Subsection (a), Section 13.343, Water Code,
5 is amended to read as follows:

6 (a) The owner of a utility that supplies retail water
7 service may not contract to purchase from an affiliated supplier
8 wholesale water service for any of that owner's systems unless:

9 (1) the wholesale service is provided for not more
10 than 90 days to remedy an emergency condition, as defined by utility
11 commission or commission rule; or

12 (2) the executive director of the utility commission
13 determines that the utility cannot obtain wholesale water service
14 from another source at a lower cost than from the affiliate.

15 SECTION 2.57. Section 13.381, Water Code, is amended to
16 read as follows:

17 Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party
18 to a proceeding before the utility commission or the commission is
19 entitled to judicial review under the substantial evidence rule.

20 SECTION 2.58. Subsection (a), Section 13.382, Water Code,
21 is amended to read as follows:

22 (a) Any party represented by counsel who alleges that
23 existing rates are excessive or that rates prescribed by the
24 utility commission are excessive and who is a prevailing party in
25 proceedings for review of a utility commission order or decision
26 may in the same action recover against the regulation fund
27 reasonable fees for attorneys and expert witnesses and other costs

1 incurred by him before the utility commission and the court. The
2 amount of the attorney's fees shall be fixed by the court.

3 SECTION 2.59. Section 13.411, Water Code, is amended to
4 read as follows:

5 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE.

6 (a) If the utility commission or the commission has reason to
7 believe that any retail public utility or any other person or
8 corporation is engaged in or is about to engage in any act in
9 violation of this chapter or of any order or rule of the utility
10 commission or the commission entered or adopted under this chapter
11 or that any retail public utility or any other person or corporation
12 is failing to comply with this chapter or with any rule or order,
13 the attorney general on request of the utility commission or the
14 commission, in addition to any other remedies provided in this
15 chapter, shall bring an action in a court of competent jurisdiction
16 in the name of and on behalf of the utility commission or the
17 commission against the retail public utility or other person or
18 corporation to enjoin the commencement or continuation of any act
19 or to require compliance with this chapter or the rule or order.

20 (b) If the executive director of the utility commission or
21 the executive director of the commission has reason to believe that
22 the failure of the owner or operator of a water utility to properly
23 operate, maintain, or provide adequate facilities presents an
24 imminent threat to human health or safety, the executive director
25 of the utility commission or the executive director of the
26 commission shall immediately:

27 (1) notify the utility's representative; and

1 (2) initiate enforcement action consistent with:

2 (A) this subchapter; and

3 (B) procedural rules adopted by the utility
4 commission or the commission.

5 SECTION 2.60. Section 13.4115, Water Code, is amended to
6 read as follows:

7 Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER
8 CHARGE; PENALTY. In regard to a customer complaint arising out of a
9 charge made by a public utility, if the utility commission [~~the~~
10 ~~executive director~~] finds that the utility has failed to make the
11 proper adjustment to the customer's bill after the conclusion of
12 the complaint process established by the utility commission, the
13 utility commission may issue an order requiring the utility to make
14 the adjustment. Failure to comply with the order within 30 days of
15 receiving the order is a violation for which the utility commission
16 may impose an administrative penalty under Section 13.4151.

17 SECTION 2.61. Subsections (a), (f), and (g), Section
18 13.412, Water Code, are amended to read as follows:

19 (a) At the request of the utility commission or the
20 commission, the attorney general shall bring suit for the
21 appointment of a receiver to collect the assets and carry on the
22 business of a water or sewer utility that:

23 (1) has abandoned operation of its facilities;

24 (2) informs the utility commission or the commission
25 that the owner is abandoning the system;

26 (3) violates a final order of the utility commission
27 or the commission; or

1 (4) allows any property owned or controlled by it to be
2 used in violation of a final order of the utility commission or the
3 commission.

4 (f) For purposes of this section and Section 13.4132,
5 abandonment may include but is not limited to:

6 (1) failure to pay a bill or obligation owed to a
7 retail public utility or to an electric or gas utility with the
8 result that the utility service provider has issued a notice of
9 discontinuance of necessary services;

10 (2) failure to provide appropriate water or wastewater
11 treatment so that a potential health hazard results;

12 (3) failure to adequately maintain facilities,
13 resulting in potential health hazards, extended outages, or
14 repeated service interruptions;

15 (4) failure to provide customers adequate notice of a
16 health hazard or potential health hazard;

17 (5) failure to secure an alternative available water
18 supply during an outage;

19 (6) displaying a pattern of hostility toward or
20 repeatedly failing to respond to the utility commission or the
21 commission or the utility's customers; and

22 (7) failure to provide the utility commission or the
23 commission with adequate information on how to contact the utility
24 for normal business and emergency purposes.

25 (g) Notwithstanding Section 64.021, Civil Practice and
26 Remedies Code, a receiver appointed under this section may seek
27 [~~commission~~] approval from the utility commission and the

1 commission to acquire the water or sewer utility's facilities and
2 transfer the utility's certificate of convenience and necessity.
3 The receiver must apply in accordance with Subchapter H.

4 SECTION 2.62. Section 13.413, Water Code, is amended to
5 read as follows:

6 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The
7 receiver may, subject to the approval of the court and after giving
8 notice to all interested parties, sell or otherwise dispose of all
9 or part of the real or personal property of a water or sewer utility
10 against which a proceeding has been brought under this subchapter
11 to pay the costs incurred in the operation of the receivership. The
12 costs include:

- 13 (1) payment of fees to the receiver for his services;
14 (2) payment of fees to attorneys, accountants,
15 engineers, or any other person or entity that provides goods or
16 services necessary to the operation of the receivership; and
17 (3) payment of costs incurred in ensuring that any
18 property owned or controlled by a water or sewer utility is not used
19 in violation of a final order of the utility commission or the
20 commission.

21 SECTION 2.63. Section 13.4131, Water Code, is amended to
22 read as follows:

23 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The
24 utility commission, after providing to the utility notice and an
25 opportunity for a hearing, may place a utility under supervision
26 for gross or continuing mismanagement, gross or continuing
27 noncompliance with this chapter or a rule adopted under this

1 chapter [~~commission rules~~], or noncompliance with an order issued
2 under this chapter [~~commission orders~~].

3 (b) While supervising a utility, the utility commission may
4 require the utility to abide by conditions and requirements
5 prescribed by the utility commission, including:

6 (1) management requirements;

7 (2) additional reporting requirements;

8 (3) restrictions on hiring, salary or benefit
9 increases, capital investment, borrowing, stock issuance or
10 dividend declarations, and liquidation of assets; and

11 (4) a requirement that the utility place the utility's
12 funds into an account in a financial institution approved by the
13 utility commission and use of those funds shall be restricted to
14 reasonable and necessary utility expenses.

15 (c) While supervising a utility, the utility commission may
16 require that the utility obtain [~~commission~~] approval from the
17 utility commission before taking any action that may be restricted
18 under Subsection (b) [~~of this section~~]. Any action or transaction
19 which occurs without [~~commission~~] approval may be voided by the
20 utility commission.

21 SECTION 2.64. Subsections (a) and (c), Section 13.4133,
22 Water Code, are amended to read as follows:

23 (a) Notwithstanding the requirements of Section 13.187 [~~of~~
24 ~~this code~~], the utility commission may authorize an emergency rate
25 increase for a utility for which a person has been appointed under
26 Section 13.4132 [~~of this code~~] or for which a receiver has been
27 appointed under Section 13.412 [~~of this code~~] if the increase is

1 necessary to ensure the provision of continuous and adequate
2 services to the utility's customers.

3 (c) The utility commission shall schedule a hearing to
4 establish a final rate within 15 months after the date on which an
5 emergency rate increase takes effect. The utility commission shall
6 require the utility to provide notice of the hearing to each
7 customer and to the Office of Public Utility Counsel. The
8 additional revenues collected under an emergency rate increase are
9 subject to refund if the utility commission finds that the rate
10 increase was larger than necessary to ensure continuous and
11 adequate service.

12 SECTION 2.65. Subsections (a) and (c), Section 13.414,
13 Water Code, are amended to read as follows:

14 (a) Any retail public utility or affiliated interest that
15 violates this chapter, fails to perform a duty imposed on it, or
16 fails, neglects, or refuses to obey an order, rule, direction, or
17 requirement of the utility commission or the commission or decree
18 or judgment of a court is subject to a civil penalty of not less than
19 \$100 nor more than \$5,000 for each violation.

20 (c) The attorney general shall institute suit on his own
21 initiative or at the request of, in the name of, and on behalf of the
22 utility commission or the commission in a court of competent
23 jurisdiction to recover the penalty under this section.

24 SECTION 2.66. (a) If H.B. No. 2694, Acts of the 82nd
25 Legislature, Regular Session, 2011, does not become law, Subsection
26 (a), Section 13.4151, Water Code, is amended to read as follows:

27 (a) If a person, affiliated interest, or entity subject to

1 the jurisdiction of the utility commission or the commission
2 violates this chapter or a rule or order adopted under this chapter,
3 the utility commission or the commission, as applicable, may assess
4 a penalty against that person, affiliated interest, or entity as
5 provided by this section. The penalty may be in an amount not to
6 exceed \$500 a day. Each day a violation continues may be considered
7 a separate violation.

8 (b) If H.B. No. 2694, Acts of the 82nd Legislature, Regular
9 Session, 2011, becomes law, Subsection (a), Section 13.4151, Water
10 Code, as effective September 1, 2011, is amended to read as follows:

11 (a) If a person, affiliated interest, or entity subject to
12 the jurisdiction of the utility commission or the commission
13 violates this chapter or a rule or order adopted under this chapter,
14 the utility commission or the commission, as applicable, may assess
15 a penalty against that person, affiliated interest, or entity as
16 provided by this section. The penalty may be in an amount not to
17 exceed \$5,000 a day. Each day a violation continues may be
18 considered a separate violation.

19 SECTION 2.67. Subsections (b) through (k) and (m), Section
20 13.4151, Water Code, are amended to read as follows:

21 (b) In determining the amount of the penalty, the utility
22 commission or the commission shall consider:

23 (1) the nature, circumstances, extent, duration, and
24 gravity of the prohibited acts or omissions;

25 (2) with respect to the alleged violator:

26 (A) the history and extent of previous
27 violations;

1 (B) the degree of culpability, including whether
2 the violation was attributable to mechanical or electrical failures
3 and whether the violation could have been reasonably anticipated
4 and avoided;

5 (C) the demonstrated good faith, including
6 actions taken by the person, affiliated interest, or entity to
7 correct the cause of the violation;

8 (D) any economic benefit gained through the
9 violation; and

10 (E) the amount necessary to deter future
11 violations; and

12 (3) any other matters that justice requires.

13 (c) If, after examination of a possible violation and the
14 facts surrounding that possible violation, the executive director
15 of the utility commission or the executive director of the
16 commission concludes that a violation has occurred, the executive
17 director of the utility commission or the executive director of the
18 commission may issue a preliminary report stating the facts on
19 which that conclusion is based, recommending that a penalty under
20 this section be imposed on the person, affiliated interest, or
21 retail public utility charged, and recommending the amount of that
22 proposed penalty. The executive director of the utility commission
23 or the executive director of the commission shall base the
24 recommended amount of the proposed penalty on the factors provided
25 by Subsection (b) [~~of this section~~], and shall analyze each factor
26 for the benefit of the agency [~~commission~~].

27 (d) Not later than the 10th day after the date on which the

1 report is issued, the executive director of the utility commission
2 or the executive director of the commission shall give written
3 notice of the report to the person, affiliated interest, or retail
4 public utility charged with the violation. The notice shall
5 include a brief summary of the charges, a statement of the amount of
6 the penalty recommended, and a statement of the right of the person,
7 affiliated interest, or retail public utility charged to a hearing
8 on the occurrence of the violation, the amount of the penalty, or
9 both.

10 (e) Not later than the 20th day after the date on which
11 notice is received, the person, affiliated interest, or retail
12 public utility charged may give the agency [~~commission~~] written
13 consent to the [~~executive director's~~] report described by
14 Subsection (d), including the recommended penalty, or may make a
15 written request for a hearing.

16 (f) If the person, affiliated interest, or retail public
17 utility charged with the violation consents to the penalty
18 recommended in the report described by Subsection (d) [~~by the~~
19 ~~executive director~~] or fails to timely respond to the notice, the
20 utility commission or the commission by order shall assess that
21 penalty or order a hearing to be held on the findings and
22 recommendations in the [~~executive director's~~] report. If the
23 utility commission or the commission assesses the penalty
24 recommended by the report, the utility commission or the commission
25 shall give written notice to the person, affiliated interest, or
26 retail public utility charged of its decision.

27 (g) If the person, affiliated interest, or retail public

1 utility charged requests or the utility commission or the
2 commission orders a hearing, the agency [~~commission~~] shall call a
3 hearing and give notice of the hearing. As a result of the hearing,
4 the agency [~~commission~~] by order may find that a violation has
5 occurred and may assess a civil penalty, may find that a violation
6 has occurred but that no penalty should be assessed, or may find
7 that no violation has occurred. All proceedings under this
8 subsection are subject to Chapter 2001, Government Code. In making
9 any penalty decision, the agency [~~commission~~] shall analyze each of
10 the factors provided by Subsection (b) [~~of this section~~].

11 (h) The utility commission or the commission shall give
12 notice of its decision to the person, affiliated interest, or
13 retail public utility charged, and if the agency [~~commission~~] finds
14 that a violation has occurred and has assessed a penalty, the
15 agency [~~commission~~] shall give written notice to the person,
16 affiliated interest, or retail public utility charged of its
17 findings, of the amount of the penalty, and of the person's,
18 affiliated interest's, or retail public utility's right to judicial
19 review of the agency's [~~commission's~~] order. If the agency
20 [~~commission~~] is required to give notice of a penalty under this
21 subsection or Subsection (f) [~~of this section~~], the agency
22 [~~commission~~] shall file notice of the agency's [~~its~~] decision in
23 the Texas Register not later than the 10th day after the date on
24 which the decision is adopted.

25 (i) Within the 30-day period immediately following the day
26 on which the agency's [~~commission's~~] order is final, as provided by
27 Subchapter F, Chapter 2001, Government Code, the person, affiliated

1 interest, or retail public utility charged with the penalty shall:

2 (1) pay the penalty in full; or

3 (2) if the person, affiliated interest, or retail
4 public utility seeks judicial review of the fact of the violation,
5 the amount of the penalty, or both:

6 (A) forward the amount of the penalty to the
7 agency [~~commission~~] for placement in an escrow account; or

8 (B) post with the agency [~~commission~~] a
9 supersedeas bond in a form approved by the agency [~~commission~~] for
10 the amount of the penalty to be effective until all judicial review
11 of the order or decision is final.

12 (j) Failure to forward the money to or to post the bond with
13 the agency [~~commission~~] within the time provided by Subsection (i)
14 [~~of this section~~] constitutes a waiver of all legal rights to
15 judicial review. If the person, affiliated interest, or retail
16 public utility charged fails to forward the money or post the bond
17 as provided by Subsection (i) [~~of this section~~], the agency
18 [~~commission~~] or the executive director of the agency may forward
19 the matter to the attorney general for enforcement.

20 (k) Judicial review of the order or decision of the agency
21 [~~commission~~] assessing the penalty shall be under the substantial
22 evidence rule and may be instituted by filing a petition with a
23 district court in Travis County, as provided by Subchapter G,
24 Chapter 2001, Government Code.

25 (m) Notwithstanding any other provision of law, the agency
26 [~~commission~~] may compromise, modify, extend the time for payment
27 of, or remit, with or without condition, any penalty imposed under

1 this section.

2 SECTION 2.68. Section 13.417, Water Code, is amended to
3 read as follows:

4 Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail
5 public utility fails to comply with any lawful order of the utility
6 commission or the commission or with any subpoena or subpoena duces
7 tecum or if any witness refuses to testify about any matter on which
8 he may be lawfully interrogated, the utility commission or the
9 commission may apply to any court of competent jurisdiction to
10 compel obedience by proceedings for contempt.

11 SECTION 2.69. Section 13.418, Water Code, is amended to
12 read as follows:

13 Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER
14 UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected
15 under this chapter from a retail public utility that is not a public
16 utility in other than criminal proceedings shall be [~~paid to the~~
17 ~~commission and~~] deposited in the general revenue fund.

18 (b) Fines and penalties collected from a public utility
19 under this chapter in other than criminal proceedings shall be
20 [~~paid to the commission and~~] deposited in the water utility
21 improvement account as provided by Section 341.0485, Health and
22 Safety Code.

23 SECTION 2.70. Subdivision (7), Section 13.501, Water Code,
24 is amended to read as follows:

25 (7) "Multiple use facility" means commercial or
26 industrial parks, office complexes, marinas, and others
27 specifically identified in utility commission rules with five or

1 more units.

2 SECTION 2.71. Subsection (e), Section 13.502, Water Code,
3 is amended to read as follows:

4 (e) An owner of an apartment house, manufactured home rental
5 community, or multiple use facility or a manager of a condominium
6 may not change from submetered billing to allocated billing unless:

7 (1) the executive director of the utility commission
8 approves of the change in writing after a demonstration of good
9 cause, including meter reading or billing problems that could not
10 feasibly be corrected or equipment failures; and

11 (2) the property owner meets rental agreement
12 requirements established by the utility commission.

13 SECTION 2.72. Subsections (a), (b), and (e), Section
14 13.503, Water Code, are amended to read as follows:

15 (a) The utility commission shall encourage submetering of
16 individual rental or dwelling units by master meter operators or
17 building owners to enhance the conservation of water resources.

18 (b) Notwithstanding any other law, the utility commission
19 shall adopt rules and standards under which an owner, operator, or
20 manager of an apartment house, manufactured home rental community,
21 or multiple use facility that is not individually metered for water
22 for each rental or dwelling unit may install submetering equipment
23 for each individual rental or dwelling unit for the purpose of
24 fairly allocating the cost of each individual rental or dwelling
25 unit's water consumption, including wastewater charges based on
26 water consumption. In addition to other appropriate safeguards for
27 the tenant, the rules shall require that, except as provided by this

1 section, an apartment house owner, manufactured home rental
2 community owner, multiple use facility owner, or condominium
3 manager may not impose on the tenant any extra charges, over and
4 above the cost per gallon and any other applicable taxes and
5 surcharges that are charged by the retail public utility to the
6 owner or manager, and that the rental unit or apartment house owner
7 or manager shall maintain adequate records regarding submetering
8 and make the records available for inspection by the tenant during
9 reasonable business hours. The rules shall allow an owner or
10 manager to charge a tenant a fee for late payment of a submetered
11 water bill if the amount of the fee does not exceed five percent of
12 the bill paid late. All submetering equipment is subject to the
13 rules and standards established by the utility commission for
14 accuracy, testing, and record keeping of meters installed by
15 utilities and to the meter-testing requirements of Section 13.140
16 [~~of this code~~].

17 (e) The utility commission may authorize a building owner to
18 use submetering equipment that relies on integrated radio based
19 meter reading systems and remote registration in a building
20 plumbing system using submeters that comply with nationally
21 recognized plumbing standards and are as accurate as utility water
22 meters in single application conditions.

23 SECTION 2.73. Section 13.5031, Water Code, is amended to
24 read as follows:

25 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any
26 other law, the utility commission shall adopt rules and standards
27 governing billing systems or methods used by manufactured home

1 rental community owners, apartment house owners, condominium
2 managers, or owners of other multiple use facilities for prorating
3 or allocating among tenants nonsubmetered master metered utility
4 service costs. In addition to other appropriate safeguards for the
5 tenant, those rules shall require that:

6 (1) the rental agreement contain a clear written
7 description of the method of calculation of the allocation of
8 nonsubmetered master metered utilities for the manufactured home
9 rental community, apartment house, or multiple use facility;

10 (2) the rental agreement contain a statement of the
11 average manufactured home, apartment, or multiple use facility unit
12 monthly bill for all units for any allocation of those utilities for
13 the previous calendar year;

14 (3) except as provided by this section, an owner or
15 condominium manager may not impose additional charges on a tenant
16 in excess of the actual charges imposed on the owner or condominium
17 manager for utility consumption by the manufactured home rental
18 community, apartment house, or multiple use facility;

19 (4) the owner or condominium manager shall maintain
20 adequate records regarding the utility consumption of the
21 manufactured home rental community, apartment house, or multiple
22 use facility, the charges assessed by the retail public utility,
23 and the allocation of the utility costs to the tenants;

24 (5) the owner or condominium manager shall maintain
25 all necessary records concerning utility allocations, including
26 the retail public utility's bills, and shall make the records
27 available for inspection by the tenants during normal business

1 hours; and

2 (6) the owner or condominium manager may charge a
3 tenant a fee for late payment of an allocated water bill if the
4 amount of the fee does not exceed five percent of the bill paid
5 late.

6 SECTION 2.74. Section 13.505, Water Code, is amended to
7 read as follows:

8 Sec. 13.505. ENFORCEMENT. In addition to the enforcement
9 provisions contained in Subchapter K [~~of this chapter~~], if an
10 apartment house owner, condominium manager, manufactured home
11 rental community owner, or other multiple use facility owner
12 violates a rule of the utility commission regarding submetering of
13 utility service consumed exclusively within the tenant's dwelling
14 unit or multiple use facility unit or nonsubmetered master metered
15 utility costs, the tenant may recover three times the amount of any
16 overcharge, a civil penalty equal to one month's rent, reasonable
17 attorney's fees, and court costs from the owner or condominium
18 manager. However, an owner of an apartment house, manufactured
19 home rental community, or other multiple use facility or
20 condominium manager is not liable for a civil penalty if the owner
21 or condominium manager proves the violation was a good faith,
22 unintentional mistake.

23 SECTION 2.75. Section 13.512, Water Code, is amended to
24 read as follows:

25 Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION
26 CONTRACTS. Any eligible city is authorized to enter into
27 privatization contracts if such action is recommended by the board

1 of utility trustees and authorized by the governing body of the
2 eligible city pursuant to an ordinance. Any privatization contract
3 entered into prior to the effective date of this Act is validated,
4 ratified, and approved. Each eligible city shall file a copy of its
5 privatization contract with the utility commission, for
6 information purposes only, within 60 days of execution or the
7 effective date of this Act, whichever is later.

8 SECTION 2.76. Section 13.513, Water Code, is amended to
9 read as follows:

10 Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE
11 PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider
12 shall not constitute a "water and sewer utility," a "public
13 utility," a "utility," or a "retail public utility" within the
14 meaning of Chapter 13 as a result of entering into or performing a
15 privatization contract, if the governing body of the eligible city
16 shall so elect by ordinance and provide notice thereof in writing to
17 the utility commission; provided, however, this provision shall not
18 affect the application of Chapter 13 to an eligible city itself.
19 Notwithstanding anything contained in this section, any service
20 provider who seeks to extend or render sewer service to any person
21 or municipality other than, or in addition to, an eligible city may
22 be a "public utility" for the purposes of Chapter 13 with respect to
23 such other person or municipality.

24 SECTION 2.77. Subsection (a), Section 5.013, Water Code, is
25 amended to read as follows:

26 (a) The commission has general jurisdiction over:

27 (1) water and water rights including the issuance of

1 water rights permits, water rights adjudication, cancellation of
2 water rights, and enforcement of water rights;

3 (2) continuing supervision over districts created
4 under Article III, Sections 52(b)(1) and (2), and Article XVI,
5 Section 59, of the Texas Constitution;

6 (3) the state's water quality program including
7 issuance of permits, enforcement of water quality rules, standards,
8 orders, and permits, and water quality planning;

9 (4) the determination of the feasibility of certain
10 federal projects;

11 (5) the adoption and enforcement of rules and
12 performance of other acts relating to the safe construction,
13 maintenance, and removal of dams;

14 (6) conduct of the state's hazardous spill prevention
15 and control program;

16 (7) the administration of the state's program relating
17 to inactive hazardous substance, pollutant, and contaminant
18 disposal facilities;

19 (8) the administration of a portion of the state's
20 injection well program;

21 (9) the administration of the state's programs
22 involving underground water and water wells and drilled and mined
23 shafts;

24 (10) the state's responsibilities relating to regional
25 waste disposal;

26 (11) the responsibilities assigned to the commission
27 by Chapters 361, 363, 382, and 401, Health and Safety Code; and

1 (12) [~~administration of the state's water rate program~~
2 ~~under Chapter 13 of this code, and~~

3 [~~(13)~~] any other areas assigned to the commission by
4 this code and other laws of this state.

5 SECTION 2.78. (a) On June 1, 2012, the following are
6 transferred from the Texas Commission on Environmental Quality to
7 the Public Utility Commission of Texas:

8 (1) the powers, duties, functions, programs, and
9 activities of the Texas Commission on Environmental Quality
10 relating to the economic regulation of water and sewer utilities,
11 including the issuance and transfer of certificates of convenience
12 and necessity, the determination of rates, and the administration
13 of hearings and proceedings involving those matters, under Chapter
14 13, Water Code, as provided by this article;

15 (2) any obligations and contracts of the Texas
16 Commission on Environmental Quality that are directly related to
17 implementing a power, duty, function, program, or activity
18 transferred under this article; and

19 (3) all property and records in the custody of the
20 Texas Commission on Environmental Quality that are related to a
21 power, duty, function, program, or activity transferred under this
22 article and all funds appropriated by the legislature for that
23 power, duty, function, program, or activity.

24 (b) The Texas Commission on Environmental Quality and the
25 Public Utility Commission of Texas shall enter into a memorandum of
26 understanding that:

27 (1) identifies in detail the applicable powers and

1 duties that are transferred by this article;

2 (2) establishes a plan for the identification and
3 transfer of the records, personnel, property, and unspent
4 appropriations of the Texas Commission on Environmental Quality
5 that are used for purposes of the commission's powers and duties
6 directly related to the regulation of water and sewer utilities
7 under Chapter 13, Water Code, as amended by this article; and

8 (3) establishes a plan for the transfer of all pending
9 applications, hearings, rulemaking proceedings, and orders
10 relating to the economic regulation of water and sewer utilities
11 under Chapter 13, Water Code, as amended by this article, from the
12 Texas Commission on Environmental Quality to the Public Utility
13 Commission of Texas.

14 (c) The memorandum of understanding described by this
15 section is not required to be adopted by rule under Section 5.104,
16 Water Code.

17 (d) The executive directors of the Texas Commission on
18 Environmental Quality and the Public Utility Commission of Texas
19 may agree in the memorandum of understanding under this section to
20 transfer to the Public Utility Commission of Texas any personnel of
21 the Texas Commission on Environmental Quality whose functions
22 predominantly involve powers, duties, obligations, functions, and
23 activities related to the regulation of water and sewer utilities
24 under Chapter 13, Water Code, as amended by this article.

25 (e) The Texas Commission on Environmental Quality and the
26 Public Utility Commission of Texas shall appoint a transition team
27 to accomplish the purposes of this section. The transition team

1 shall establish guidelines on how the two agencies will cooperate
2 regarding:

- 3 (1) meeting federal drinking water standards;
- 4 (2) maintaining adequate supplies of water;
- 5 (3) meeting established design criteria for
6 wastewater treatment plants;
- 7 (4) demonstrating the economic feasibility of
8 regionalization; and
- 9 (5) serving the needs of economically distressed
10 areas.

11 (f) A rule, form, policy, procedure, or decision of the
12 Texas Commission on Environmental Quality related to a power, duty,
13 function, program, or activity transferred under this article
14 continues in effect as a rule, form, policy, procedure, or decision
15 of the Public Utility Commission of Texas and remains in effect
16 until amended or replaced by that agency.

17 (g) The memorandum required by this section must be
18 completed by April 1, 2012.

19 (h) The Public Utility Commission of Texas and the Texas
20 Commission on Environmental Quality shall adopt rules to implement
21 the changes in law made by this article to Chapter 13, Water Code,
22 not later than November 1, 2012.

23 SECTION 2.79. (a) The Public Utility Commission of Texas
24 shall conduct a comparative analysis of the ratemaking authority of
25 the commission before the effective date of this Act and the
26 ratemaking authority of the commission after the transition
27 described in Section 2.78 of this article, to identify potential

1 for procedural standardization. The Public Utility Commission of
2 Texas shall issue a report of the analysis, with recommendations
3 regarding rate standardization, for consideration by the 83rd
4 Legislature.

5 (b) The Public Utility Commission of Texas shall prepare a
6 report describing staffing changes related to the transition
7 described in Section 2.78 of this article, including reductions in
8 staff that the commission may realize as a result of consolidated
9 functions. The Public Utility Commission of Texas shall submit the
10 report to the Legislative Budget Board and the governor with the
11 legislative appropriations request for the 2014-2015 biennium.

12 SECTION 2.80. (a) On June 1, 2012, the following are
13 transferred from the office of public interest counsel of the Texas
14 Commission on Environmental Quality to the Office of Public Utility
15 Counsel:

16 (1) the powers, duties, functions, programs, and
17 activities of the office of public interest counsel of the Texas
18 Commission on Environmental Quality relating to the representation
19 of the public interest in matters related to the regulation of water
20 and sewer utilities under Chapter 13, Water Code, as amended by this
21 article;

22 (2) any obligations and contracts of the office of
23 public interest counsel of the Texas Commission on Environmental
24 Quality that are directly related to implementing a power, duty,
25 function, program, or activity transferred under this article; and

26 (3) all property and records in the custody of the
27 office of public interest counsel of the Texas Commission on

1 Environmental Quality that are related to a power, duty, function,
2 program, or activity transferred under this article and all funds
3 appropriated by the legislature for that power, duty, function,
4 program, or activity.

5 (b) The office of public interest counsel of the Texas
6 Commission on Environmental Quality and the Office of Public
7 Utility Counsel shall enter into a memorandum of understanding
8 that:

9 (1) identifies in detail the applicable powers and
10 duties that are transferred by this article; and

11 (2) establishes a plan for the identification and
12 transfer of the records, personnel, property, and unspent
13 appropriations of the Texas Commission on Environmental Quality
14 that are used for purposes of the office of public interest
15 counsel's powers and duties directly related to the representation
16 of the public interest in matters relating to the regulation of
17 water and sewer utilities under Chapter 13, Water Code, as amended
18 by this article.

19 (c) The memorandum of understanding described by this
20 section is not required to be adopted by rule under Section 5.104,
21 Water Code.

22 (d) The office of public interest counsel of the Texas
23 Commission on Environmental Quality and the Office of Public
24 Utility Counsel may agree in the memorandum of understanding under
25 this section to transfer to the Office of Public Utility Counsel any
26 personnel of the office of public interest counsel whose functions
27 predominantly involve powers, duties, obligations, functions, and

1 activities related to the representation of the public interest in
2 matters relating to the regulation of water and sewer utilities
3 under Chapter 13, Water Code, as amended by this article.

4 (e) The office of public interest counsel of the Texas
5 Commission on Environmental Quality and the Office of Public
6 Utility Counsel shall appoint a transition team to accomplish the
7 purposes of this section.

8 (f) A rule, form, policy, procedure, or decision of the
9 office of public interest counsel of the Texas Commission on
10 Environmental Quality related to a power, duty, function, program,
11 or activity transferred under this article continues in effect as a
12 rule, form, policy, procedure, or decision of the Office of Public
13 Utility Counsel and remains in effect until amended or replaced by
14 that agency.

15 (g) The memorandum required by this section must be
16 completed by April 1, 2012.

17 (h) The Office of Public Utility Counsel and the office of
18 public interest counsel of the Texas Commission on Environmental
19 Quality shall adopt rules to implement the changes in law made by
20 this article to Chapter 13, Water Code, not later than November 1,
21 2012.

22 ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY

23 COMMISSION OF TEXAS

24 SECTION 3.01. Section 11.002, Water Code, is amended by
25 adding Subdivision (21) to read as follows:

26 (21) "Utility commission" means the Public Utility
27 Commission of Texas.

1 SECTION 3.02. Section 11.041, Water Code, is amended to
2 read as follows:

3 Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person
4 entitled to receive or use water from any canal, ditch, flume,
5 lateral, dam, reservoir, or lake or from any conserved or stored
6 supply may present to the utility commission a written petition
7 showing:

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

10 (2) that the person [~~he~~] is willing and able to pay a
11 just and reasonable price for the water;

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

15 (4) that the party owning or controlling the water
16 supply fails or refuses to supply the available water to the
17 petitioner, or that the price or rental demanded for the available
18 water is not reasonable and just or is discriminatory.

19 (b) If the petition is accompanied by a deposit of \$25, the
20 executive director of the utility commission shall have a
21 preliminary investigation of the complaint made and determine
22 whether or not there are probable grounds for the complaint.

23 (c) If, after preliminary investigation, the executive
24 director of the utility commission determines that probable grounds
25 exist for the complaint, the utility commission shall enter an
26 order setting a time and place for a hearing on the petition.

27 (d) The utility commission may require the complainant to

1 make an additional deposit or execute a bond satisfactory to the
2 utility commission in an amount fixed by the utility commission
3 conditioned on the payment of all costs of the proceeding.

4 (e) At least 20 days before the date set for the hearing, the
5 utility commission shall transmit by registered mail a certified
6 copy of the petition and a certified copy of the hearing order to
7 the person against whom the complaint is made.

8 (f) The utility commission shall hold a hearing on the
9 complaint at the time and place stated in the order. It may hear
10 evidence orally or by affidavit in support of or against the
11 complaint, and it may hear arguments. The commission may
12 participate in the hearing for the purpose of presenting evidence
13 on the availability of the water requested by the petitioner. On
14 completion of the hearing, the utility commission shall render a
15 written decision.

16 (g) If, after the preliminary investigation, the executive
17 director of the utility commission determines that no probable
18 grounds exist for the complaint, the executive director of the
19 utility commission shall dismiss the complaint. The utility
20 commission may either return the deposit or pay it into the State
21 Treasury.

22 SECTION 3.03. Section 12.013, Water Code, is amended to
23 read as follows:

24 Sec. 12.013. RATE-FIXING POWER. (a) The utility
25 commission shall fix reasonable rates for the furnishing of raw or
26 treated water for any purpose mentioned in Chapter 11 or 12 of this
27 code.

1 (b) In this section, [~~The term~~] "political subdivision"
2 [~~when used in this section~~] means incorporated cities, towns or
3 villages, counties, river authorities, water districts, and other
4 special purpose districts.

5 (c) The utility commission in reviewing and fixing
6 reasonable rates for furnishing water under this section may use
7 any reasonable basis for fixing rates as may be determined by the
8 utility commission to be appropriate under the circumstances of the
9 case being reviewed; provided, however, the utility commission may
10 not fix a rate which a political subdivision may charge for
11 furnishing water which is less than the amount required to meet the
12 debt service and bond coverage requirements of that political
13 subdivision's outstanding debt.

14 (d) The utility commission's jurisdiction under this
15 section relating to incorporated cities, towns, or villages shall
16 be limited to water furnished by such city, town, or village to
17 another political subdivision on a wholesale basis.

18 (e) The utility commission may establish interim rates and
19 compel continuing service during the pendency of any rate
20 proceeding.

21 (f) 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 ~~[(g) No action or proceeding commenced prior to January 1,~~
27 ~~1977, before the Texas Water Rights Commission shall be affected by~~

1 ~~the enactment of this section.~~

2 ~~[(h) Nothing herein contained shall affect the jurisdiction~~
3 ~~of the Public Utility Commission.]~~

4 ARTICLE 4. EFFECTIVE DATE

5 SECTION 4.01. This Act takes effect on the 91st day after
6 the last day of the legislative session.