By: Nichols, Hegar (Solomons) S.B. No. 661

Substitute the following for S.B. No. 661:

By: Cook C.S.S.B. No. 661

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions, as applicable, of the Electric Reliability Council of Texas, the Office of Public Utility Counsel, and the Public Utility Commission of Texas and to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas; imposing administrative penalties.

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

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE PUBLIC UTILITY COMMISSION OF TEXAS, THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, AND THE OFFICE OF PUBLIC UTILITY COUNSEL

SECTION 1.01. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2023 [~~2011~~].

SECTION 1.02. Section 12.155, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) A commissioner may not be employed by an independent organization certified under Section 39.151. The prohibition under this subsection applies until the second anniversary of the date the commissioner ceases to serve as a commissioner.

SECTION 1.03. Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2023 [~~2011~~].

SECTION 1.04. Section 15.023, Utilities Code, is amended to read as follows:

Sec. 15.023. ADMINISTRATIVE PENALTY, DISGORGEMENT ORDER, OR MITIGATION PLAN. (a) The commission may impose an administrative penalty against a person regulated under this title who violates this title or a rule or order adopted under this title.

(b) Except as provided by Subsection (b-1), the [~~The~~] penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b-1) The penalty for a violation of a reliability standard adopted by the independent organization certified under Section 39.151 or of a commission rule relating to reliability in the wholesale electric market may be in an amount not to exceed $100,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b-2) If a person pays a penalty to a federal authority for a violation of a reliability standard that is the same or substantially the same as a reliability standard adopted by the independent organization certified under Section 39.151:

(1) the commission may not assess an administrative penalty for the same instance or circumstance for which the person paid the federal penalty; and

(2) the commission shall refund the full amount of an administrative penalty that the commission assessed against the person before the date the person paid the federal penalty, if the commission assessed the penalty for the same instance or circumstance for which the person paid the federal penalty.

(c) The commission by rule shall establish a classification system for violations described by Subsection (b) and a separate classification system for violations described by Subsection (b-1). Each system must include [~~that includes~~] a range of administrative penalties that may be assessed for each class of violation, based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds $5,000

may be assessed only if the violation is included in the highest class of violations in the classification system. This subsection does not apply to the classification system established under Subsection (c) for a violation described by Subsection (b-1).

(e) For a violation of Section 39.157, the commission shall, in addition to the assessment of a penalty, order disgorgement of all excess revenue resulting from the violation. For any other violation of the statutes, rules, or protocols relating to wholesale electric markets, the commission may, in addition to the assessment of a penalty, order disgorgement of all excess revenue resulting from the violation.

(f) The commission and a person may develop and enter into a voluntary mitigation plan relating to a violation of Section 39.157 or rules adopted by the commission under that section. If the commission and a person enter into a voluntary mitigation plan, adherence to the plan constitutes an absolute defense against an alleged violation with respect to activities covered by the plan.

(g) In this subchapter, "excess revenue" means revenue in excess of revenue that would have occurred absent a violation.

SECTION 1.05. The heading to Section 15.024, Utilities Code, is amended to read as follows:

Sec. 15.024. ADMINISTRATIVE PENALTY ASSESSMENT OR DISGORGEMENT ORDER PROCEDURE.

SECTION 1.06. Subsection (f), Section 15.024, Utilities Code, is amended to read as follows:

(f) If the person requests a hearing or fails to timely respond to the notice, the executive director shall set a hearing

and give notice of the hearing to the person. The parties to a proceeding under this subchapter shall be limited to the person and the commission, including the independent market monitor. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commission by order may find that a violation has occurred and impose a penalty or disgorgement order or may find that no violation occurred.

SECTION 1.07. Section 15.025, Utilities Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Any excess revenue ordered disgorged under this section for a violation of the statutes, rules, or protocols relating to wholesale electric markets shall be returned to the affected wholesale electric market participants to be used to reduce costs or fees incurred by retail electric customers. The commission shall adopt rules to prescribe how revenue shall be returned to the affected wholesale electric market participants under this subsection.

(f) For purposes of this section and Section 15.026, a reference to a penalty shall be construed to include disgorgement.

SECTION 1.08. Subsections (a) and (b), Section 15.026, Utilities Code, are amended to read as follows:

(a) Judicial review of a commission order imposing an

administrative penalty or disgorgement is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) under the substantial evidence rule.

(b) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty or disgorgement and order the person to pay the full or reduced amount of the penalty or disgorgement. If the court does not sustain the occurrence of the violation, the court shall order that no penalty or disgorgement is owed.

SECTION 1.09. Chapter 15, Utilities Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CEASE AND DESIST ORDERS

Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter applies only to a person to whom Subtitle B applies.

Sec. 15.102. RULES. The commission shall adopt rules to implement this subchapter.

Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission may proceed solely under this subchapter or under this subchapter in conjunction with other applicable law.

Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The commission on its own motion may issue a cease and desist order:

(1) after providing notice and an opportunity for a hearing if practicable or without notice or opportunity for a hearing; and

(2) if the commission determines that the conduct of a person:

(A) poses a threat to continuous and adequate electric service;

(B) is fraudulent;

(C) is hazardous;

(D) creates an immediate danger to the public safety; or

(E) is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by monetary compensation.

(b) The commission by order or rule may delegate to the executive director the authority to issue cease and desist orders under this subchapter.

Sec. 15.105. NOTICE. (a) Notice of a proposed order must be given not later than the 10th day before the date set for a hearing if the commission requires notice and hearing before issuing the order.

(b) On issuance of an order under Section 15.104 with or without a hearing, the commission shall serve on the person affected by the order an order that:

(1) contains a statement of the charges; and

(2) requires the person immediately to cease and desist from the acts, methods, or practices stated in the order.

(c) The commission shall serve the order by registered or certified mail, return receipt requested, to the person's last known address.

Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,

does not apply to the issuance of a cease and desist order under this subchapter without a hearing. A hearing conducted before or after issuance of an order under this subchapter is a contested case under Chapter 2001, Government Code.

(b) If the commission issues an order under this subchapter without a hearing, the person affected by the order may request a hearing to affirm, modify, or set aside the order. A request must be submitted not later than the 30th day after the date the person receives the order. The commission shall set the hearing for a date that is:

(1) not later than the 10th day after the date the commission receives a request for a hearing; or

(2) agreed to by the person and the commission.

(c) At or following the hearing, the commission shall wholly or partly affirm, modify, or set aside the order. If the person affected by an order does not request a hearing in the manner provided by Subsection (b), and the commission does not hold a hearing on the order, the order is affirmed without further action by the commission.

(d) The commission may hold a hearing under this subchapter or may authorize the State Office of Administrative Hearings to hold the hearing.

Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a hearing under this subchapter, an order continues in effect unless the order is stayed by the commission.

Sec. 15.108. ADMINISTRATIVE PENALTY. The commission may impose an administrative penalty under Subchapter B against a

person who violates an order issued under this subchapter.

SECTION 1.10. Section 31.003, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) A report issued under this section before September 1, 2013, must include a summary of the information required by Section 39.926 to be provided on the Internet website found at http://www.puc.state.tx.us. This subsection expires September 1, 2013.

SECTION 1.11. Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.155, 39.157(e), 39.203, 39.903, 39.904, 39.9051, 39.9052, [~~and~~] 39.914(e), and 39.9161, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

SECTION 1.12. Section 39.151, Utilities Code, is amended by amending Subsections (d-1), (e), and (g) and adding Subsections (d-2), (d-3), (d-4), (e-1), (g-2), (g-3), and (n) to read as follows:

(d-1) The commission shall require an independent organization certified by the commission under this section to annually submit to the commission for review and approval the organization's entire proposed annual budget. The commission may

approve, disapprove, or modify any item included in the proposed budget. The commission by rule shall establish the type of information or documents needed to effectively evaluate the proposed budget and reasonable dates for the submission of that information or those documents. The commission shall establish a procedure to provide public notice of and public participation in the budget review process.

(d-2) An independent organization certified by the commission under this section must submit to the commission for review and approval proposals for obtaining debt financing or for refinancing existing debt. The commission may approve, disapprove, or modify a proposal.

(d-3) An independent organization certified by the commission under this section shall develop proposed performance measures to track the organization's operations. The independent organization must submit the proposed performance measures to the commission for review and approval. The commission shall annually review the organization's performance as part of the budget review process under Subsection (d-1). The commission shall prepare an annual report detailing the organization's performance and submit the report to the lieutenant governor, the speaker of the house of representatives, and each house and senate standing committee that has jurisdiction over electric utility issues.

(d-4) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and

relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;

(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) After approving the budget of an independent organization under Subsection (d-1), the [~~The~~] commission shall [~~may~~] authorize the [~~an independent~~] organization [~~that is certified under this section~~] to charge [~~a reasonable and competitively neutral rate~~] to wholesale buyers and sellers a system administration fee, within a range determined by the commission, that is reasonable and competitively neutral to fund

[~~to cover~~] the independent organization's approved budget [~~costs~~]. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate [~~the organization's budget and~~] the reasonableness and neutrality of the fee [~~a rate or proposed rate~~] or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate the fee. The commission shall require the independent organization to closely match actual revenues generated by the fee with revenue necessary to fund the budget and make quarterly fee adjustments to ensure that the budget year does not end with surplus or insufficient funds. The commission shall require the organization to submit to the commission quarterly reports that compare actual expenditures with budgeted expenditures [~~a rate or a rate request~~].

(e-1) The review and approval of a proposed budget under Subsection (d-1) or a proceeding to authorize and set the range for the amount of a fee under Subsection (e) is not a contested case for purposes of Chapter 2001, Government Code.

(g) To maintain certification as an independent organization under this section, an organization's governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the

process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) [~~the chairman of the commission as an ex officio nonvoting member;~~

[~~(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests ;~~

[~~(3)~~] the chief executive officer of the independent organization as an ex officio voting member;

(2) [~~(4)~~] six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing entities that serve retail customers [~~power marketers~~];

(D) two [~~one~~] representing organizations that represent retail customers [~~retail electric providers~~]; and

(E) one representing both municipally owned utilities[~~,~~] and

[~~(F) one representing~~] electric cooperatives; and

(3) four [~~(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term;~~

[~~(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term; and~~

[~~(7) five~~] members unaffiliated with any market segment and selected by the other members of the governing body to serve not more than two three-year terms.

(g-2) To maintain certification as an independent organization under this section, the organization's governing body must establish and implement a formal process for adopting new protocols or revisions to existing protocols. The process must require that:

(1) a majority of the organization's governing body initiate the creation or revision of protocols; and

(2) the organization's staff develop the new or revised protocols and submit the protocols to the governing body for adoption.

(g-3) The governing body of an independent organization certified by the commission under this section shall, in accordance with formal bylaws or protocols adopted by the organization and approved by the commission, establish and maintain an advisory committee whose membership is broadly representative of the organization's members to assist the organization's governing body and staff in developing or revising protocols or in performing the organization's other duties and functions. This subsection does not prohibit the governing body of the organization from appointing one or more additional committees or subcommittees to assist the organization's governing body and staff in performing the

organization's duties and functions.

(n) An independent organization certified by the commission under this section is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The independent organization shall be reviewed during the periods in which the Public Utility Commission of Texas is reviewed.

SECTION 1.13. Subsection (c), Section 39.1515, Utilities Code, is amended to read as follows:

(c) The independent organization shall use money from the fee [~~rate~~] authorized by Section 39.151(e) to pay for the market monitor's activities.

SECTION 1.14. Subsection (a), Section 39.157, Utilities Code, is amended to read as follows:

(a) The commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market power abuses or other violations of this section are occurring, the commission shall require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation as authorized by Chapter 15, by imposing an administrative penalty as authorized by Chapter 15, by ordering the disgorgement of excess revenue as authorized by Chapter 15, or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356. Section 15.024(c) does not apply to

an administrative penalty imposed under this section. For purposes of this subchapter, market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, and collusion. A violation of the code of conduct provided by Subsection (d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power. The possession of a high market share in a market open to competition may not, of itself, be deemed to be an abuse of market power; however, this sentence shall not affect the application of state and federal antitrust laws.

SECTION 1.15. Subsection (d), Section 39.904, Utilities Code, is amended to read as follows:

(d) In this section, "renewable energy technology" means any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, [~~or~~] on biomass or biomass-based waste products, or on gasified waste, including landfill gas. A renewable energy

technology does not rely solely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

SECTION 1.16. (a) Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9041 to read as follows:

Sec. 39.9041. UNDERGROUND PLACEMENT OF CERTAIN COMPETITIVE RENEWABLE ENERGY ZONE TRANSMISSION LINES. A segment of a transmission line intended to serve a competitive renewable energy zone must be placed underground if the segment is placed or to be placed:

(1) adjacent and parallel to a highway;

(2) in the corporate limits or extraterritorial jurisdiction of a municipality with a population of 25,000 or less; and

(3) across the Guadalupe River.

(b) Section 39.9041, Utilities Code, as added by this section, applies only to a transmission line that is placed in service on or after the effective date of this section. A transmission line placed in service before the effective date of this section is governed by the law in effect at the time the transmission line was placed in service, and the former law is continued in effect for that purpose.

(c) This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2011.

SECTION 1.17. The heading to Section 39.916, Utilities Code, is amended to read as follows:

Sec. 39.916. [~~INTERCONNECTION OF~~] DISTRIBUTED RENEWABLE GENERATION.

SECTION 1.18. Section 39.916, Utilities Code, is amended by amending Subsections (a), (c), (f), and (j), and adding Subsections (i), (k), (l), (m), (n), (o), (p), and (q) to read as follows:

(a) In this section:

(1) "Distributed renewable generation" means electric generation with a capacity of not more than 2,000 kilowatts provided by a renewable energy technology, as defined by Section 39.904, that is installed on a retail electric customer's side of the meter.

(2) "Distributed renewable generation owner" means:

(A) an [~~the~~] owner of distributed renewable generation;

(B) a retail electric customer on whose side of the meter distributed renewable generation is installed and operated, regardless of whether the customer takes ownership of the distributed renewable generation; or

(C) a person who by contract is assigned ownership rights to energy produced from distributed renewable generation located at the premises of the customer on the customer's side of the meter.

(3) "Interconnection" means the right of a distributed renewable generation owner to physically connect distributed renewable generation to an electricity distribution system, and the

technical requirements, rules, or processes for the connection.

(4) "Surplus electricity" means electricity generated by distributed renewable generation that is not consumed at the place the distributed renewable generation is installed and that flows onto the electric distribution system.

(c) A distributed renewable generation owner [~~customer~~] may request interconnection by filing an application for interconnection with the transmission and distribution utility or electric utility. Procedures of a transmission and distribution utility or electric utility for the submission and processing of a distributed renewable generation owner's [~~customer's~~] application for interconnection shall be consistent with rules adopted by the commission regarding interconnection.

(f) At the request of a distributed renewable generation owner, a [~~A~~] transmission and distribution utility or electric utility shall make available to the [~~a~~] distributed renewable generation owner for purposes of this section metering required for services provided under this section, including separate meters that measure the load and generator output or a single meter capable of measuring in-flow and out-flow at the point of common coupling meter point. The distributed renewable generation owner must pay the differential cost of the metering unless the meters are provided at no additional cost. Except as provided by this section, Section 39.107 applies to metering under this section.

(i) A distributed renewable generation owner may sell surplus electricity to a retail electric provider or electric utility under this section only if the owner's distributed

renewable generation is rated to produce an amount of electricity that is less than or equal to the amount of electricity that the retail electric customer for whom the distributed renewable generation is installed is reasonably expected to consume annually.

(j) A [~~For~~] distributed renewable generation owner that sells surplus electricity [~~owners~~] in an area [~~areas~~] in which customer choice has been introduced [~~, the distributed renewable generation owner~~] must sell the [~~owner's surplus~~] electricity [~~produced~~] to the retail electric provider that serves the [~~distributed renewable generation owner's~~] load of the retail electric customer for whom the distributed renewable generation is installed at a value agreed to by [~~between~~] the distributed renewable generation owner and the provider. The value [~~that serves the owner's load which~~] may include, but is not limited to, an agreed value based on the clearing price of energy at the time of day that the electricity is made available to the grid or the value [~~it~~] may be a monetary credit applied to an account during a billing period that may be carried over to subsequent billing periods until the credit has been redeemed.

(k) The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a distributed renewable generation owner under this section in an area in which customer choice has been introduced is accounted for in settling the total load served by the provider that serves the [~~that owner's~~] load of the retail electric customer for whom the distributed renewable generation is installed [~~by January 1, 2009~~]. A distributed renewable generation owner requesting net

metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

(l) A distributed renewable generation owner that sells surplus electricity in an area in which customer choice has not been introduced must sell the electricity to the electric utility that serves the load of the retail electric customer for whom the distributed renewable generation is installed. The electric utility shall purchase the surplus electricity at a value that is equal to the avoided cost of the electric utility, as determined in accordance with commission rules.

(m) An electric utility that purchases surplus electricity under this section shall:

(1) make a payment to the seller at least once each quarter; or

(2) apply a monetary credit to the seller's account and allow the credit balance to be carried forward onto the seller's next monthly bill for not more than 12 months.

(n) An electric utility that purchases surplus electricity under this section shall inform the distributed renewable generation owner of the amount of surplus electricity purchased from the owner in kilowatt hours during the owner's most recent billing cycle and the price paid for the electricity.

(o) A distributed renewable generation owner may file a written complaint with the commission relating to a violation of Subsection (l), (m), or (n).

(p) Neither a retail electric customer that uses

distributed renewable generation nor the owner of the distributed renewable generation that the retail electric customer uses is an electric utility, power generation company, or retail electric provider for the purposes of this title and neither is required to register with or be certified by the commission if at the time distributed renewable generation is installed, the estimated annual amount of electricity to be produced by the distributed renewable generation is less than or equal to the retail electric customer's estimated annual electricity consumption.

(q) This section does not apply to a municipally owned utility or electric cooperative.

SECTION 1.19. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9161 to read as follows:

Sec. 39.9161. DISTRIBUTED RENEWABLE GENERATION WITH MUNICIPALLY OWNED UTILITIES OR ELECTRIC COOPERATIVES. (a) A municipally owned utility or electric cooperative shall provide the utility's or cooperative's customers access to interconnection of distributed renewable generation and payment for surplus electricity produced.

(b) The governing body of a municipally owned utility or board of directors of an electric cooperative shall provide oversight and adopt rates, rules, and procedures to allow interconnection and payment for surplus electricity on or before the 120th day after the date the governing body or board receives a bona fide request for interconnection.

(c) A municipally owned utility or electric cooperative that had retail sales of 500,000 megawatt hours or more in 2010

shall file the utility's or cooperative's interconnection and surplus electricity rates, rules, and procedures with the State Energy Conservation Office not later than January 1, 2012, and shall make timely updates to the filed rates, rules, and procedures.

(d) An electric cooperative shall allow interconnection if:

(1) the distributed renewable generation to be interconnected has a five-year warranty against breakdown or undue degradation;

(2) the rated capacity of the distributed renewable generation does not exceed the electric cooperative service capacity; and

(3) the distributed renewable generation meets other technical requirements for interconnection that are consistent with commission rules.

(e) An electric cooperative may not require a distributed renewable generation owner whose distributed renewable generation meets the standards established under Subsection (d) to purchase an amount, type, or classification of liability insurance the distributed renewable generation owner would not have in the absence of the distributed renewable generation.

SECTION 1.20. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.926 to read as follows:

Sec. 39.926. INFORMATION ON INTERNET REGARDING PURCHASE OF SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION. On an Internet website administered by the commission, the commission shall provide for access to easily comparable

information regarding retail electric providers' offers to residential distributed renewable generation owners for their surplus electricity.

SECTION 1.21. Subchapter C, Chapter 52, Utilities Code, is amended by adding Section 52.1035 to read as follows:

Sec. 52.1035. RENEWAL OF CERTAIN REGISTRATIONS OR CERTIFICATES. (a) The commission by rule shall require each interexchange telecommunications utility, holder of a certificate of operating authority, and holder of a service provider certificate of operating authority to file with the commission on a one-time or regular basis:

(1) the utility's or holder's name;

(2) the utility's or holder's address; and

(3) the most recent version of each annual report the commission requires the utility or holder to file under this subtitle.

(b) The rules must:

(1) require the commission to automatically allow a utility or holder an extension of a filing deadline for the number of days prescribed by the rule, as applicable; and

(2) state that the registration or certificate of a utility or holder will not be valid after the last day of the automatic extension period described by Subdivision (1) if the utility or holder does not file information required by the commission under this section by the end of the automatic extension period.

(c) A utility or holder whose registration or certificate is

no longer valid may reregister or obtain a new certificate only by complying with the requirements prescribed for an original registration or for obtaining an original certificate.

SECTION 1.22. Subchapter I, Chapter 55, Utilities Code, is amended by adding Section 55.204 to read as follows:

Sec. 55.204. ELECTRONIC TELEPHONE DIRECTORY. (a) Notwithstanding any other provision of this title, a telecommunications provider or telecommunications utility is not required to publish or distribute to the public a printed telephone directory listing, provided that the provider or utility:

(1) provides written notice to the commission that the provider or utility will no longer publish or distribute a printed telephone directory listing;

(2) notifies its customers that the provider or utility will no longer publish or distribute a printed telephone directory listing; and

(3) publishes a telephone directory listing on the provider's or utility's Internet website.

(b) A provider or utility that publishes a telephone directory listing as described by Subsection (a) shall provide a print or digital copy of the directory listing to a customer on request. The customer must be able to request the print or digital copy on the provider's or utility's Internet website or by calling a toll-free telephone number. A provider or utility shall provide the first print or digital copy requested by a customer in each calendar year at no charge to the customer.

SECTION 1.23. Chapter 185, Utilities Code, is amended to

read as follows:

CHAPTER 185. [~~RATING OF~~] SOLAR ENERGY DEVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 185.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Public Utility Commission of Texas.

(2) "Solar energy device" means a solar energy collector or solar energy system that provides for the collection of solar energy or the subsequent use of that energy as thermal, mechanical, or electrical energy.

SUBCHAPTER B. RATING OF SOLAR ENERGY DEVICES

Sec. 185.021 [~~185.002~~]. COMPLIANCE. A person who rates, labels, or certifies the performance of a solar energy device in this state shall comply with the standards adopted by the commission under this chapter.

Sec. 185.022 [~~185.003~~]. ADOPTION OF STANDARDS. (a) The commission shall study and adopt standards for rating solar energy devices. The standards shall be used in performance labeling and certification of solar energy devices in this state.

(b) The commission shall examine rating standards and certification programs used by other states and by industry in adopting standards under this section.

(c) The commission shall adopt the standards that the commission finds are the most widely used unless the commission finds that those standards are not suitable for use in this state. If the commission finds that a widely used standard is not suitable, the commission may amend the standard or adopt a standard that the

commission finds suitable.

Sec. 185.023 [~~185.004~~]. USE OF NATIONAL STANDARDS. If national standards for rating and certifying solar energy devices are developed by a federal agency in conjunction with the states and industry, the commission shall adopt those national standards as the standards for use in this state.

Sec. 185.024 [~~185.005~~]. REVIEW OF STANDARDS. The commission shall periodically review the standards adopted under this chapter and shall amend those standards as necessary to ensure that the standards are:

(1) appropriate in view of current technology; and

(2) the same as or similar to the standards widely used by other states and by industry.

SUBCHAPTER C. SOLAR ENERGY DEVICE RESTRICTIONS

Sec. 185.051. CERTAIN RESTRICTIONS VOID. (a) Except as provided by Subsection (b), a provision in the dedicatory instrument of a property owners' association that prohibits or restricts a property owner from installing a solar energy device conflicts with the goal for renewable energy provided by Section 39.904 and is void.

(b) A provision is not void if the provision only prohibits a solar energy device that:

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association;

(4) is located in an area on the property owner's property other than:

(A) on the roof of the home or of another structure allowed under a dedicatory instrument; or

(B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

(A) extends higher than the roofline;

(B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;

(C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or

(D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed:

(A) conflicts with the manufacturer's

installation requirements; or

(B) voids material warranties; or

(8) was installed without prior approval by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

Sec. 185.052. RULES. The commission shall adopt rules to implement this subchapter.

SECTION 1.24. Section 39.916(h), Utilities Code, is repealed.

SECTION 1.25. The Public Utility Commission of Texas shall adopt rules to implement the filing process required by Section 52.1035, Utilities Code, as added by this article, as soon as practicable. The rules must specify whether the commission will require that an interexchange telecommunications utility, holder of a certificate of operating authority, or holder of a service provider certificate of operating authority file the information required by Section 52.1035, Utilities Code, as added by this article, once or on a regular basis. Regardless of the frequency of filing required, each utility or holder shall file the information required by Section 52.1035, Utilities Code, as added by this article, not later than January 1, 2012. If the commission requires regular filings, the rules must specify the timing of the subsequent filings.

SECTION 1.26. The changes in law made by this article to Sections 15.023, 15.024, 15.025, 15.026, and 39.157, Utilities Code, apply only to a violation that occurs on or after the

effective date of this Act. For purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date. A violation that occurs before the effective date of this Act is covered by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 1.27. Subchapter C, Chapter 185, Utilities Code, as added by this Act, applies to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the effective date of this Act.

ARTICLE 2. WATER AND SEWER UTILITIES

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

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

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

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

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

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls

directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

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

(F) any person or corporation that the utility commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

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

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

(22-a) "Utility commission" means the Public Utility

Commission of Texas.

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

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

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

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

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

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

Sec. 13.011. EMPLOYEES. (a) The executive director of the utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's

powers and duties under this chapter.

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The executive director of the utility commission and the utility commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the utility commission under this subchapter. The duties of the respective executive directors and staffs [~~director and the staff~~] include:

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

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

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

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

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

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

(7) other activities that are reasonably necessary to

enable the executive director and the staff to perform their duties.

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

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

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

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

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

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

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

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

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

(B) small commercial consumers, as a class, in

any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

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

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or

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

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

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

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

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

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

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

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

Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION [~~POWER~~]; RULES; HEARINGS. (a) The utility commission may regulate and supervise the business of each [~~every~~] water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. The commission shall regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. The utility commission and the commission [~~and~~] may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers [~~this power~~] and jurisdiction. The utility commission may consult with the commission as necessary in carrying out its duties related to the regulation of water and sewer utilities.

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

(c) The commission and the utility commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the

production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of the commission or the utility commission.

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

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act; and

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

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

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

(g) The regulatory assessment required by Section 5.701(n)

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

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

Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

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

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

which the municipality reinstates jurisdiction.

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

(e) The utility commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

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

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

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body by filing a petition for review with the utility commission and by serving copies on all parties to the

original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

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

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

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

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

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

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the

boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(c) An appeal under Subsection (b) [~~of this section~~] must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b) [~~of this section~~].

(e) In an appeal under Subsection (b) [~~of this section~~], the utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) [~~of this section~~] remain in effect until the first anniversary of the

effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. An appeal under this subsection must be initiated within 90 days after the date written

notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. A determination made by the utility commission on an appeal under this subsection is binding on all similarly situated applicants for service, and the utility commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

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

(j) In an appeal under this section, the utility commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

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

(b) Notwithstanding the provisions of any resolution, ordinance, or agreement, a district may appeal the rates imposed by

the municipality by filing a petition with the utility commission. The utility commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable. The utility commission shall fix the rates to be charged by the municipality and the municipality may not increase such rates without the approval of the utility commission.

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

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The utility commission by rule shall establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

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

(c) The utility commission shall provide a reasonable period for the retail public utility that takes over the

nonfunctioning system to bring the nonfunctioning system into compliance with utility commission and commission rules during which the utility commission or the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The utility commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

SECTION 2.11. Subchapter C, Chapter 13, Water Code, is amended by adding Section 13.047 to read as follows:

Sec. 13.047. REVIEW AND ORDER FOR CERTAIN WHOLESALE WATER RATES. (a) A conservation and reclamation district that provides potable water service to district customers may file an application with the utility commission requesting a review of the rate a supplier of raw or treated surface water or groundwater charges the district to determine whether the rate adversely affects the public interest.

(b) The utility commission shall presume that the rate adversely affects the public interest if it is shown on hearing that the rate the supplier charges the district at the time the application is made is at least 50 percent higher than the rate charged at any time during the 36-month period before the date of the application. The utility commission shall determine the rate the supplier charges the district adversely affects the public interest if the utility commission determines:

(1) the protested rate impairs the district's ability to continue to provide service to its retail customers, based on the district's financial integrity and operational capability;

(2) the rate evidences the supplier's abuse of monopoly power in the supplier's provision of water to the district after weighing all relevant factors, including:

(A) the disparate bargaining power of the parties, including the district's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative supplies of water;

(B) whether the supplier failed to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) whether the supplier changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the supplier demands the rate in accordance with a contract, whether other valuable consideration was paid or received by a party incident to that contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the supplier's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in this state by other similarly situated suppliers of water for resale; and

(H) the supplier's rates for water charged to the supplier's retail customers, if any, compared to the retail rates the district charges the district's retail customers as a result of the wholesale rate the supplier demands from the district; or

(3) the rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the

supplier charges other wholesale customers.

(c) If the utility commission finds on hearing the application that the rate adversely affects the public interest or if the rate is presumed to adversely affect the public interest as provided by Subsection (b), the utility commission by order shall fix a just and reasonable rate at which the supplier may charge the district. In fixing the rate, the utility commission shall use a methodology that preserves the financial integrity of the supplier.

SECTION 2.12. Section 13.081, Water Code, is amended to read as follows:

Sec. 13.081. FRANCHISES. This chapter may not be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement may limit or interfere with any power conferred on the utility commission by this chapter. If a municipality performs regulatory functions under this chapter, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

SECTION 2.13. Section 13.082, Water Code, is amended to read as follows:

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

pursuant to this chapter.

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

(c) Notwithstanding any election, the utility commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

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

(e) This section does not limit the duty and power of the utility commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other

areas in Texas.

SECTION 2.14. Section 13.085, Water Code, is amended to read as follows:

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

SECTION 2.15. Subsection (c), Section 13.087, Water Code, is amended to read as follows:

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

SECTION 2.16. Subsections (a), (b), (c), and (e), Section 13.131, Water Code, are amended to read as follows:

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

this chapter.

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

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

(e) Every utility is required to keep and render its books,

accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the utility commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

SECTION 2.17. Section 13.132, Water Code, is amended to read as follows:

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

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

(2) establish forms for all reports;

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

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

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

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

(7) require that a copy of annual reports showing all payments of compensation, other than salary or wages subject to the withholding of federal income tax, made to residents of Texas, or

with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

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

SECTION 2.18. Subsection (b), Section 13.133, Water Code, is amended to read as follows:

(b) The regulatory authority may require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority [~~commission~~] so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

SECTION 2.19. Subsections (b) and (c), Section 13.136, Water Code, are amended to read as follows:

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

(c) Every water supply or sewer service corporation shall file with the utility commission tariffs showing all rates that are subject to the appellate jurisdiction of the utility commission and that are in force at the time for any utility service, product, or commodity offered. Every water supply or sewer service corporation shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service,

product, or commodity furnished. The filing required under this subsection shall be for informational purposes only.

SECTION 2.20. Section 13.137, Water Code, is amended to read as follows:

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

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

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

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

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

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

(c) Books, accounts, records, or memoranda required by the

regulatory authority to be kept in the state may not be removed from the state, except on conditions prescribed by the utility commission.

SECTION 2.21. Subsection (b), Section 13.139, Water Code, is amended to read as follows:

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

(1) ascertain and fix just and reasonable standards, classifications, regulations, service rules, minimum service standards or practices to be observed and followed with respect to the service to be furnished;

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

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

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

SECTION 2.22. Section 13.1395, Water Code, is amended by adding Subsection (m) to read as follows:

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

SECTION 2.23. Subsection (b), Section 13.142, Water Code, is amended to read as follows:

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

SECTION 2.24. Section 13.144, Water Code, is amended to read as follows:

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

SECTION 2.25. Subsection (a), Section 13.147, Water Code, is amended to read as follows:

(a) A retail public utility providing water service may contract with a retail public utility providing sewer service to

bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

SECTION 2.26. Subsection (b), Section 13.181, Water Code, is amended to read as follows:

(b) Subject to this chapter, the utility commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body. The utility commission may adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and

reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 2.27. Subsections (c) and (d), Section 13.182, Water Code, are amended to read as follows:

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

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

SECTION 2.28. Subsection (d), Section 13.183, Water Code, is amended to read as follows:

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

SECTION 2.29. Subsection (a), Section 13.184, Water Code, is amended to read as follows:

(a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its original jurisdiction over rates and services may use alternate ratemaking methodologies established by

ordinance or by utility commission rule in accordance with Section 13.183(c). Unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 2.30. Subsections (d), (k), and (o), Section 13.187, Water Code, are amended to read as follows:

(d) Except as provided by Subsection (d-1), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) [~~of this code~~].

(k) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (e), the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by

Subsection (d-1), the proposed rate may not be suspended for longer than:

(1) 90 days by a local regulatory authority; or

(2) 150 days by the utility commission.

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

SECTION 2.31. Subsection (a), Section 13.188, Water Code, is amended to read as follows:

(a) Notwithstanding any other provision in this chapter, the utility commission by rule shall adopt a procedure allowing a utility to file with the utility commission an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause. The utility commission, by rule, shall require the pass through of documented decreases in energy costs within a reasonable time. The pass through, whether a decrease or increase, shall be implemented on no later than an annual basis, unless the utility commission determines a special circumstance applies.

SECTION 2.32. Subsections (a) and (d), Section 13.241, Water Code, are amended to read as follows:

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the utility commission shall ensure that the applicant possesses the financial, managerial, and

technical capability to provide continuous and adequate service.

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

SECTION 2.33. Subsections (a) and (c), Section 13.242, Water Code, are amended to read as follows:

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(c) The utility commission may by rule allow a municipality or utility or water supply corporation to render retail water service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 [~~of this~~

~~code~~] that it intends to provide retail water service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

SECTION 2.34. Section 13.244, Water Code, is amended to read as follows:

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

(b) Each public utility and water supply or sewer service corporation shall file with the utility commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the utility commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

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

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

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

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

(B) the Texas State Plane Coordinate System;

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

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

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

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

(4) a description of the sources of funding for all facilities;

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

(6) a current financial statement of the applicant;

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

(A) at least 50 acres; and

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

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

SECTION 2.35. Subsections (b), (c), and (e), Section 13.245, Water Code, are amended to read as follows:

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

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

(1) does not have the ability to provide service; or

(2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

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

SECTION 2.36. Subsection (c), Section 13.2451, Water Code,

is amended to read as follows:

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

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

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

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

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

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the utility

commission shall require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the utility commission or the commission under:

(1) Section 13.248 or 13.255; or

(2) Chapter 65.

(b) The utility commission may grant applications and issue certificates and amendments to certificates only if the utility commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The utility commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

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

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

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

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

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

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

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

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

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

(d) The utility commission may require an applicant for a certificate or for an amendment to provide a bond or other financial

assurance in a form and amount specified by the utility commission to ensure that continuous and adequate utility service is provided.

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

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

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held

by the utility commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

SECTION 2.38. Subsection (a), Section 13.247, Water Code, is amended to read as follows:

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

SECTION 2.39. Section 13.248, Water Code, is amended to read as follows:

Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission after public notice and hearing,

are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 2.40. Subsections (b), (c), and (e), Section 13.250, Water Code, are amended to read as follows:

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

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

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

(3) nonuse; or

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

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

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

SECTION 2.41. Subsection (d), Section 13.2502, Water Code, is amended to read as follows:

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

SECTION 2.42. Section 13.251, Water Code, is amended to read as follows:

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

SECTION 2.43. Section 13.252, Water Code, is amended to read as follows:

Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of

another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

SECTION 2.44. Section 13.253, Water Code, is amended to read as follows:

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

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

(A) provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the utility commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a

utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the utility commission;

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

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

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

(b) If the utility commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355, Health and Safety Code, or under this chapter, the utility commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a [~~commission~~] meeting of the utility commission, may immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other

financial assurance in an amount determined by the utility commission not to exceed the amount of the bond or financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard [~~by the commissioners~~] at a [~~commission~~] meeting of the utility commission. After notice and hearing, the utility commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SECTION 2.45. Section 13.254, Water Code, is amended to read as follows:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The utility commission at any time after notice and hearing may[~~, on its own motion or on receipt of a petition described by Subsection (a-1),~~] revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if the utility commission [~~it~~] finds that:

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

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining

service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

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

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

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the utility commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

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

(A) the area for which service is sought;

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

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

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

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

(3) the certificate holder:

(A) has refused to provide the service;

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

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

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

(a-2) A landowner is not entitled to make the election

described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by the utility commission if the landowner's property is located:

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

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

(a-3) Within 90 calendar days from the date the utility commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the utility commission shall grant the petition unless the utility commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The utility commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the utility commission may require an award of compensation as otherwise provided by this section.

(a-4) Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). The decision of the utility commission on the petition is final after any reconsideration

authorized by the utility commission's rules and may not be appealed.

(a-5) As an alternative to decertification under Subsection (a) and expedited release under Subsection (a-1), the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000.

(a-6) The utility commission shall grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. The utility commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

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

(c) If the certificate of any retail public utility is revoked or amended, the utility commission may require one or more

retail public utilities with their consent to provide service in the area in question. The order of the utility commission shall not be effective to transfer property.

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

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

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

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for

its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the utility commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 60 calendar days. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a

determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

SECTION 2.46. Subsections (a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Section 13.255, Water Code, are amended to read as follows:

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

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the utility commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The utility commission shall grant single certification to the municipality. The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification.

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

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

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by

the utility commission's final order and property determined by the utility commission to be rendered useless or valueless by the granting of single certification; and

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

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

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

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

(g-1) The utility commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The utility commission

by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the utility commission determines that the municipality's application is administratively complete.

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

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

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

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

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or

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

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

SECTION 2.47. Section 13.2551, Water Code, is amended to

read as follows:

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

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

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

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

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

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

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

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

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

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

SECTION 2.48. Subsections (e), (i), (r), and (s), Section 13.257, Water Code, are amended to read as follows:

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

Subsection (m) or (n) or liable for any other damages to any person for:

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

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

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

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

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

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

(r) A utility service provider shall:

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

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

(B) the Texas State Plane Coordinate System;

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

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

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

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the utility commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 2.49. Subsections (a) through (g), Section 13.301, Water Code, are amended to read as follows:

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

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

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

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for

providing continuous and adequate service to the requested area and any areas currently certificated to the person.

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

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

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

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

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

(3) the person or an affiliated interest of the person

purchasing or acquiring the water or sewer system has a history of:

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

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

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

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

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

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

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

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

interest.

SECTION 2.50. Section 13.302, Water Code, is amended to read as follows:

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

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

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

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

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

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

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

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

SECTION 2.51. Section 13.303, Water Code, is amended to read as follows:

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

SECTION 2.52. Section 13.304, Water Code, is amended to read as follows:

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

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301, but shall provide written notice to the utility commission and the commission before the 30th day preceding the date on which the foreclosure is completed.

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

SECTION 2.53. Section 13.341, Water Code, is amended to read as follows:

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

SECTION 2.54. Section 13.342, Water Code, is amended to read as follows:

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The utility commission may require the disclosure of

the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

SECTION 2.55. Subsection (a), Section 13.343, Water Code, is amended to read as follows:

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

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

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

SECTION 2.56. Section 13.381, Water Code, is amended to read as follows:

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

SECTION 2.57. Subsection (a), Section 13.382, Water Code, is amended to read as follows:

(a) Any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the utility commission are excessive and who is a prevailing party in proceedings for review of a utility commission order or decision may in the same action recover against the regulation fund

reasonable fees for attorneys and expert witnesses and other costs incurred by him before the utility commission and the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.58. Section 13.411, Water Code, is amended to read as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) If the utility commission or the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the utility commission or the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the utility commission or the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the utility commission or the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

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

(1) notify the utility's representative; and

(2) initiate enforcement action consistent with:

(A) this subchapter; and

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

SECTION 2.59. Section 13.4115, Water Code, is amended to read as follows:

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

SECTION 2.60. Subsections (a), (f), and (g), Section 13.412, Water Code, are amended to read as follows:

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

(1) has abandoned operation of its facilities;

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

(3) violates a final order of the utility commission

or the commission; or

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

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

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

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

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

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

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

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

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

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek

[~~commission~~] approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

SECTION 2.61. Section 13.413, Water Code, is amended to read as follows:

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

(1) payment of fees to the receiver for his services;

(2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and

(3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the utility commission or the commission.

SECTION 2.62. Section 13.4131, Water Code, is amended to read as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing

noncompliance with this chapter or a rule adopted under this chapter [~~commission rules~~], or noncompliance with an order issued under this chapter [~~commission orders~~].

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

(1) management requirements;

(2) additional reporting requirements;

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

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

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

SECTION 2.63. Subsections (a) and (c), Section 13.4133, Water Code, are amended to read as follows:

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

appointed under Section 13.412 [~~of this code~~] if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

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

SECTION 2.64. Subsections (a) and (c), Section 13.414, Water Code, are amended to read as follows:

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

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

SECTION 2.65. Subsections (a) through (k) and (m), Section 13.4151, Water Code, are amended to read as follows:

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

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

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

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

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

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

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

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

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

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the

facts surrounding that possible violation, the executive director of the utility commission or the executive director of the commission concludes that a violation has occurred, the executive director of the utility commission or the executive director of the commission may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. The executive director of the utility commission or the executive director of the commission shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) [~~of this section~~], and shall analyze each factor for the benefit of the agency [~~commission~~].

(d) Not later than the 10th day after the date on which the report is issued, the executive director of the utility commission or the executive director of the commission shall give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person, affiliated interest, or retail public utility charged may give the agency [~~commission~~] written consent to the [~~executive director's~~] report described by

Subsection (c), including the recommended penalty, or may make a written request for a hearing.

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

(g) If the person, affiliated interest, or retail public utility charged requests or the utility commission or the commission orders a hearing, the agency [~~commission~~] shall call a hearing and give notice of the hearing. As a result of the hearing, the agency [~~commission~~] by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the agency [~~commission~~] shall analyze each of the factors provided by Subsection (b) [~~of this section~~].

(h) The utility commission or the commission shall give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the agency [~~commission~~] finds

that a violation has occurred and has assessed a penalty, the agency [~~commission~~] shall give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's [~~commission's~~] order. If the agency [~~commission~~] is required to give notice of a penalty under this subsection or Subsection (f) [~~of this section~~], the agency [~~commission~~] shall file notice of the agency's [~~its~~] decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within the 30-day period immediately following the day on which the agency's [~~commission's~~] order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

(1) pay the penalty in full; or

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

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

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

(j) Failure to forward the money to or to post the bond with the agency [~~commission~~] within the time provided by Subsection (i) [~~of this section~~] constitutes a waiver of all legal rights to

judicial review. If the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i) [~~of this section~~], the agency [~~commission~~] or the executive director of the agency may forward the matter to the attorney general for enforcement.

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

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

SECTION 2.66. Section 13.417, Water Code, is amended to read as follows:

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

SECTION 2.67. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected

under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be [~~paid to the commission and~~] deposited in the general revenue fund.

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

SECTION 2.68. Subdivision (7), Section 13.501, Water Code, is amended to read as follows:

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

SECTION 2.69. Subsection (e), Section 13.502, Water Code, is amended to read as follows:

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

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

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

SECTION 2.70. Subsections (a), (b), and (e), Section 13.503, Water Code, are amended to read as follows:

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

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by

utilities and to the meter-testing requirements of Section 13.140 [~~of this code~~].

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

SECTION 2.71. Section 13.5031, Water Code, is amended to read as follows:

Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

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

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

(3) except as provided by this section, an owner or

condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple use facility;

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

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

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

SECTION 2.72. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K [~~of this chapter~~], if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered

utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

SECTION 2.73. Section 13.512, Water Code, is amended to read as follows:

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the utility commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

SECTION 2.74. Section 13.513, Water Code, is amended to read as follows:

Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter [~~Chapter 13~~] as a result of entering into or

performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the utility commission; provided, however, this provision shall not affect the application of this chapter [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of this chapter [~~Chapter 13~~] with respect to such other person or municipality.

SECTION 2.75. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.76. (a) On June 1, 2012, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer utilities, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapter

13, Water Code, as provided by this article;

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

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

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

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

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

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

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

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

(e) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall appoint a transition team to accomplish the purposes of this section. The transition team shall establish guidelines on how the two agencies will cooperate regarding:

(1) meeting federal drinking water standards;

(2) maintaining adequate supplies of water;

(3) meeting established design criteria for wastewater treatment plants;

(4) demonstrating the economic feasibility of regionalization; and

(5) serving the needs of economically distressed areas.

(f) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article

continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas and remains in effect until amended or replaced by that agency.

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

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

SECTION 2.77. (a) The Public Utility Commission of Texas shall conduct a comparative analysis of the ratemaking authority of the commission before the effective date of this Act and the ratemaking authority of the commission after the transition described in Section 2.75 of this article, to identify potential for procedural standardization. The Public Utility Commission of Texas shall issue a report of the analysis, with recommendations regarding rate standardization, for consideration by the 83rd Legislature.

(b) The Public Utility Commission of Texas shall prepare a report describing staffing changes related to the transition described in Section 2.75 of this article, including reductions in staff that the commission may realize as a result of consolidated functions. The Public Utility Commission of Texas shall submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2014-2015 biennium.

SECTION 2.78. (a) On June 1, 2012, the following are transferred from the office of public interest counsel of the Texas

Commission on Environmental Quality to the Office of Public Utility Counsel:

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

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

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

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

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

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality

that are used for purposes of the office of public interest counsel's powers and duties directly related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

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

(d) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel may agree in the memorandum of understanding under this section to transfer to the Office of Public Utility Counsel any personnel of the office of public interest counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

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

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

that agency.

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

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

ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY COMMISSION OF TEXAS

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

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

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

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

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

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

(3) that the party owning or controlling the water supply has water not contracted to others and available for the

petitioner's use; and

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

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

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

(d) The utility commission may require the complainant to make an additional deposit or execute a bond satisfactory to the utility commission in an amount fixed by the utility commission conditioned on the payment of all costs of the proceeding.

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

(f) The utility commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The commission may participate in the hearing for the purpose of presenting evidence on the availability of the water requested by the petitioner. On

completion of the hearing, the utility commission shall render a written decision.

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

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

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

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

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

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

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

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

[~~(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.~~

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

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.