

By: Nichols, Hegar

S.B. No. 661

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuation and functions, as applicable, of the
3 Electric Reliability Council of Texas, the Office of Public Utility
4 Counsel, and the Public Utility Commission of Texas and to the
5 transfer of certain functions from the Texas Commission on
6 Environmental Quality to the Public Utility Commission of Texas;
7 imposing an administrative penalty.

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

9 ARTICLE 1. GENERAL PROVISIONS RELATING TO PUC, ERCOT, AND OPUC

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

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

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

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

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

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

6 SECTION 1.04. Section 15.023, Utilities Code, is amended by
7 amending Subsections (b), (c), and (d) and adding Subsection (b-1)
8 to read as follows:

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

13 **(b-1) The penalty for a violation of a reliability standard**
14 **adopted by the independent organization certified under Section**
15 **39.151 or of a commission rule relating to reliability in the**
16 **wholesale electric market may be in an amount not to exceed**
17 **\$100,000. Each day a violation continues or occurs is a separate**
18 **violation for purposes of imposing a penalty.**

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

- 25 (1) the seriousness of the violation, including:
26 (A) the nature, circumstances, extent, and
27 gravity of a prohibited act; and

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

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

5 (3) the history of previous violations;

6 (4) the amount necessary to deter future violations;

7 (5) efforts to correct the violation; and

8 (6) any other matter that justice may require.

9 (d) The classification system established under Subsection
10 (c) shall provide that a penalty in an amount that exceeds \$5,000
11 may be assessed only if the violation is included in the highest
12 class of violations in the classification system. This subsection
13 does not apply to the classification system established under
14 Subsection (c) for a violation described by Subsection (b-1).

15 SECTION 1.05. Chapter 15, Utilities Code, is amended by
16 adding Subchapter D to read as follows:

17 SUBCHAPTER D. CEASE AND DESIST ORDERS

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

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

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

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

27 (1) after providing notice and an opportunity for a

1 hearing if practicable or without notice or opportunity for a
2 hearing; and

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

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

7 (B) is fraudulent;

8 (C) is hazardous;

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

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

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

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

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

25 (1) contains a statement of the charges; and

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

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

4 Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,
5 does not apply to the issuance of a cease and desist order under
6 this subchapter without a hearing. A hearing conducted before or
7 after issuance of an order under this subchapter is a contested case
8 under Chapter 2001, Government Code.

9 (b) Not later than the 10th day after the date the
10 commission issues an order under this subchapter without a hearing,
11 the commission shall set the time and place for a hearing to affirm,
12 modify, or set aside the order. The commission shall set the
13 hearing for a date that is not later than the 30th day after the date
14 the commission sets the time and place.

15 (c) At or following the hearing, the commission shall wholly
16 or partly affirm, modify, or set aside the order.

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

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

23 Sec. 15.108. ADMINISTRATIVE PENALTY. The commission may
24 impose an administrative penalty under Subchapter B against a
25 person who violates an order issued under this subchapter.

26 SECTION 1.06. Section 39.151, Utilities Code, is amended by
27 amending Subsections (d-1), (e), and (g) and adding Subsections

1 (d-2), (d-3), (d-4), (e-1), (g-2), (g-3), and (n) to read as
2 follows:

3 (d-1) The commission shall require an independent
4 organization certified by the commission under this section to
5 annually submit to the commission for review and approval the
6 organization's entire proposed annual budget. The commission may
7 approve, disapprove, or modify any item included in the proposed
8 budget. The commission by rule shall establish the type of
9 information or documents needed to effectively evaluate the
10 proposed budget and reasonable dates for the submission of that
11 information or those documents. The commission shall establish a
12 procedure to provide public notice of and public participation in
13 the budget review process.

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

19 (d-3) An independent organization certified by the
20 commission under this section shall develop proposed performance
21 measures to track the organization's operations. The independent
22 organization must submit the proposed performance measures to the
23 commission for review and approval. The commission shall annually
24 review the organization's performance as part of the budget review
25 process under Subsection (d-1). The commission shall prepare an
26 annual report detailing the organization's performance and submit
27 the report to the lieutenant governor, the speaker of the house of

1 representatives, and each house and senate standing committee that
2 has jurisdiction over electric utility issues.

3 (d-4) The commission may:

4 (1) require an independent organization to provide
5 reports and information relating to the independent organization's
6 performance of the functions prescribed by this section and
7 relating to the organization's revenues, expenses, and other
8 financial matters;

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

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

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

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

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

27 (e) After approving the budget of an independent

1 organization under Subsection (d-1), the ~~[The]~~ commission shall
2 ~~[may]~~ authorize the ~~[an independent]~~ organization ~~[that is~~
3 ~~certified under this section]~~ to charge ~~[a reasonable and~~
4 ~~competitively neutral rate]~~ to wholesale buyers and sellers a
5 system administration fee, within a range determined by the
6 commission, that is reasonable and competitively neutral to fund
7 ~~[to cover]~~ the independent organization's approved budget ~~[costs]~~.
8 The commission shall investigate the organization's cost
9 efficiencies, salaries and benefits, and use of debt financing and
10 may require the organization to provide any information needed to
11 effectively evaluate ~~[the organization's budget and]~~ the
12 reasonableness and neutrality of the fee ~~[a rate or proposed rate]~~
13 or to evaluate the effectiveness or efficiency of the
14 organization. The commission shall work with the organization to
15 establish the detail of information, both current and historical,
16 and the time frames the commission needs to effectively evaluate
17 the fee. The commission shall require the independent organization
18 to closely match actual revenues generated by the fee with revenue
19 necessary to fund the budget and make quarterly fee adjustments to
20 ensure that the budget year does not end with surplus or
21 insufficient funds. The commission shall require the organization
22 to submit to the commission quarterly reports that compare actual
23 expenditures with budgeted expenditures ~~[a rate or a rate request]~~.
24 (e-1) The review and approval of a proposed budget under
25 Subsection (d-1) or a proceeding to authorize and set the range for
26 the amount of a fee under Subsection (e) is not a contested case for
27 purposes of Chapter 2001, Government Code.

1 (g) To maintain certification as an independent
2 organization under this section, an organization's governing body
3 must be composed of persons specified by this section and selected
4 in accordance with formal bylaws or protocols of the
5 organization. The bylaws or protocols must be approved by the
6 commission and must reflect the input of the commission. The
7 bylaws must specify the process by which appropriate stakeholders
8 elect members and, for unaffiliated members, prescribe
9 professional qualifications for selection as a member. The bylaws
10 must require the use of a professional search firm to identify
11 candidates for membership of unaffiliated members. The process
12 must allow for commission input in identifying candidates. The
13 governing body must be composed of:

14 (1) one member unaffiliated with any market segment
15 and selected by [the chairman of] the commission, who may be a
16 former commissioner, to serve a three-year term [as an ex officio
17 ~~nonvoting member]~~;

18 (2) one member [the counsellor as an ex officio voting
19 ~~member]~~ representing residential and small commercial consumer
20 interests and selected by the counsellor to serve a one-year term;

21 (3) the chief executive officer of the independent
22 organization as an ex officio voting member;

23 (4) six market participants elected by their
24 respective market segments to serve one-year terms, with:

25 (A) one representing independent generators;

26 (B) one representing investor-owned utilities;

27 (C) one representing power marketers;

1 (D) one representing retail electric providers;
2 (E) one representing municipally owned
3 utilities; and

4 (F) one representing electric cooperatives;
5 (5) one member representing industrial consumer
6 interests and elected by the industrial consumer market segment to
7 serve a one-year term;

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

11 (7) five members unaffiliated with any market segment
12 and selected by the other members of the governing body to serve
13 three-year terms; and

14 (8) one member unaffiliated with any market segment
15 who possesses financial expertise and is selected by the other
16 members of the governing body to serve a three-year term.

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

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

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

27 (g-3) The governing body of an independent organization

1 certified by the commission under this section shall, in accordance
2 with formal bylaws or protocols adopted by the organization and
3 approved by the commission, establish and maintain an advisory
4 committee whose membership is broadly representative of the
5 organization's members to assist the organization's governing body
6 and staff in developing or revising protocols or in performing the
7 organization's other duties and functions. This subsection does
8 not prohibit the governing body of the organization from appointing
9 one or more additional committees or subcommittees to assist the
10 organization's governing body and staff in performing the
11 organization's duties and functions.

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

18 SECTION 1.07. Section 39.1515(c), Utilities Code, is
19 amended to read as follows:

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

23 SECTION 1.08. Section 52.057, Utilities Code, is amended by
24 amending Subsections (a), (b), and (c) and adding Subsections (c-1)
25 and (d-1) to read as follows:

26 (a) This section applies only to ~~[The commission shall~~
27 ~~approve]~~ a customer-specific contract ~~[that meets the requirements~~

1 ~~of Subsection (b)]~~ to provide:

2 (1) central office based PBX-type services for a
3 system of 200 stations or more;

4 (2) billing and collection services;

5 (3) high-speed private line services of 1.544 megabits
6 or greater; or

7 (4) customized services.

8 (b) The commission may require an incumbent local exchange
9 company to submit the company's customer-specific contract to the
10 commission for review [~~shall approve a contract for a service~~
11 ~~described by Subsection (a) if:~~

12 [~~(1) the contract is filed before the 30th day before~~
13 ~~the date the service contracted for is initiated,~~

14 [~~(2) the contract is accompanied by an affidavit from~~
15 ~~the person or entity contracting for the service stating that the~~
16 ~~person or entity considered acquiring the same, equivalent, or~~
17 ~~substitutable service by bid or quotation from a source other than~~
18 ~~the incumbent local exchange company,~~

19 [~~(3) the incumbent local exchange company recovers the~~
20 ~~appropriate costs of providing the service, and~~

21 [~~(4) approval of the contract is in the public~~
22 ~~interest].~~

23 (c) An affected party may request in writing that the
24 commission review a customer-specific contract. The commission by
25 rule may establish guidelines for submitting a request [~~shall~~
26 ~~approve or deny a contract under this section not later than the~~
27 ~~30th day after the date the contract is filed, unless the commission~~

1 ~~for good cause extends the effective date for an additional 35~~
2 ~~days].~~

3 (c-1) The commission by rule may establish the criteria the
4 commission will consider when reviewing a customer-specific
5 contract.

6 (d-1) The commission by rule shall prescribe the period
7 during which an incumbent local exchange company must keep a record
8 of a customer-specific contract to which the company is a party.

9 SECTION 1.09. Subchapter C, Chapter 52, Utilities Code, is
10 amended by adding Section 52.1035 to read as follows:

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

17 (1) the utility's or holder's name;
18 (2) the utility's or holder's address; and
19 (3) the most recent version of each annual report the
20 commission requires the utility or holder to file under this
21 subtitle.

22 (b) The rules must:

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

26 (2) state that the registration or certificate of a
27 utility or holder will not be valid after the last day of the

1 automatic extension period described by Subdivision (1) if the
2 utility or holder does not file information required by the
3 commission under this section by the end of the automatic extension
4 period.

5 (c) A utility or holder whose registration or certificate is
6 no longer valid may reregister or obtain a new certificate only by
7 complying with the requirements prescribed for an original
8 registration or for obtaining an original certificate.

9 SECTION 1.10. Subchapter B, Chapter 55, Utilities Code, is
10 amended by adding Section 55.026 to read as follows:

11 Sec. 55.026. NEW ORDERS PROHIBITED AFTER A CERTAIN DATE. On
12 or after September 1, 2011, the commission may not order a local
13 exchange company that is a dominant carrier to provide mandatory or
14 optional extended area service to additional metropolitan areas or
15 calling areas under this subchapter.

16 SECTION 1.11. Section 58.255, Utilities Code, is amended by
17 amending Subsection (c) and adding Subsection (e) to read as
18 follows:

19 (c) The commission may require an electing company to file a
20 private network service contract with the commission. The
21 commission shall require an electing company to file the company's
22 contract with the commission on the written request of an entity
23 described by Section 58.253(a). [~~Each contract shall be filed with~~
24 ~~the commission.~~] Commission approval of a contract is not
25 required.

26 (e) The commission by rule shall prescribe the period during
27 which an electing company must keep a record of a private network

1 service contract to which the company is a party.

2 SECTION 1.12. Section 59.074, Utilities Code, is amended by
3 amending Subsection (c) and adding Subsection (d) to read as
4 follows:

5 (c) The commission may require an electing company to file a
6 private network service contract with the commission. The
7 commission shall require an electing company to file the company's
8 contract with the commission on the written request of an entity
9 described by Section 59.072(a). [~~Each contract shall be filed with~~
10 ~~the commission.~~] Commission approval of a contract is not
11 required.

12 (d) The commission by rule shall prescribe the period during
13 which an electing company must keep a record of a private network
14 service contract to which the company is a party.

15 SECTION 1.13. The Public Utility Commission of Texas shall
16 adopt rules to implement the filing process required by Section
17 52.1035, Utilities Code, as added by this article, as soon as
18 practicable. The rules must specify whether the commission will
19 require that an interexchange telecommunications utility, holder
20 of a certificate of operating authority, or holder of a service
21 provider certificate of operating authority file the information
22 required by Section 52.1035, Utilities Code, as added by this
23 article, once or on a regular basis. Regardless of the frequency of
24 filing required, each utility or holder shall file the information
25 required by Section 52.1035, Utilities Code, as added by this
26 article, not later than January 1, 2012. If the commission requires
27 regular filings, the rules must specify the timing of the

1 subsequent filings.

2 SECTION 1.14. The change in law made by this article to
3 Section 15.023, Utilities Code, applies only to a violation that
4 occurs on or after the effective date of this Act. For purposes of
5 this section, a violation occurs before the effective date of this
6 Act if any element of the violation occurs before that date. A
7 violation that occurs before the effective date of this Act is
8 covered by the law in effect on the date the violation occurred, and
9 the former law is continued in effect for that purpose.

10 ARTICLE 2. WATER AND SEWER UTILITIES

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

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

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

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

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

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

1 securities of any utility or by any person or corporation in any
2 chain of successive ownership of five percent of those utility
3 securities;

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

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

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

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

26 (22-a) "Utility commission" means the Public Utility
27 Commission of Texas.

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

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

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

12 (2) is operating in a manner that does not comply with
13 the requirements for classifications as a nonprofit water supply or
14 sewer service corporation prescribed by Sections 13.002(11) and
15 (24).

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

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

22 Sec. 13.011. EMPLOYEES. (a) The executive director of the
23 utility commission and the executive director of the commission,
24 subject to approval, as applicable, by the utility commission or
25 the commission, shall employ any engineering, accounting, and
26 administrative personnel necessary to carry out each agency's
27 powers and duties under this chapter.

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

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

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

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

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

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

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

26 (7) other activities that are reasonably necessary to
27 enable the executive director and the staff to perform their

1 duties.

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

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

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

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

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

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

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

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

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

26 (B) small commercial consumers, as a class, in
27 any proceeding in which the counsellor determines that small

1 commercial consumers are in need of representation, including an
2 alternative dispute resolution proceeding;

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

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

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

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

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

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

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

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

27 (d) The appearance of the counsellor in a proceeding does

1 not preclude the appearance of other parties on behalf of
2 residential or small commercial consumers. The counsellor may not
3 be grouped with any other party.

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

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

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

24 (c) The commission and the utility commission may call and
25 hold hearings, administer oaths, receive evidence at hearings,
26 issue subpoenas to compel the attendance of witnesses and the
27 production of papers and documents, and make findings of fact and

1 decisions with respect to administering this chapter or the rules,
2 orders, or other actions of the commission or the utility
3 commission.

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

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

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

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

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

26 (g) The regulatory assessment required by Section 5.701(n)
27 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the

1 utility commission under Section 13.043 [~~of this code~~]. The
2 commission has the authority to enforce payment and collection of
3 the regulatory assessment.

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

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

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

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

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

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

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

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

19 (a) Any party to a rate proceeding before the governing body
20 of a municipality may appeal the decision of the governing body to
21 the utility commission. This subsection does not apply to a
22 municipally owned utility. An appeal under this subsection must be
23 initiated within 90 days after the date of notice of the final
24 decision by the governing body by filing a petition for review with
25 the utility commission and by serving copies on all parties to the
26 original rate proceeding. The utility commission shall hear the
27 appeal de novo and shall fix in its final order the rates the

1 governing body should have fixed in the action from which the appeal
2 was taken and may include reasonable expenses incurred in the
3 appeal proceedings. The utility commission may establish the
4 effective date for the utility commission's rates at the original
5 effective date as proposed by the utility provider and may order
6 refunds or allow a surcharge to recover lost revenues. The utility
7 commission may consider only the information that was available to
8 the governing body at the time the governing body made its decision
9 and evidence of reasonable expenses incurred in the appeal
10 proceedings.

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

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

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

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

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

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

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

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

1 date is later, unless the utility commission determines that a
2 financial hardship exists.

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

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

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

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

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

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

24 (b) Notwithstanding the provisions of any resolution,
25 ordinance, or agreement, a district may appeal the rates imposed by
26 the municipality by filing a petition with the utility commission.
27 The utility commission shall hear the appeal de novo and the

1 municipality shall have the burden of proof to establish that the
2 rates are just and reasonable. The utility commission shall fix the
3 rates to be charged by the municipality and the municipality may not
4 increase such rates without the approval of the utility commission.

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

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

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

24 (c) The utility commission shall provide a reasonable
25 period for the retail public utility that takes over the
26 nonfunctioning system to bring the nonfunctioning system into
27 compliance with utility commission and commission rules during

1 which the utility commission or the commission may not impose a
2 penalty for any deficiency in the system that is present at the time
3 the utility takes over the nonfunctioning system. The utility
4 commission must consult with the utility before determining the
5 period and may grant an extension of the period for good cause.

6 SECTION 2.11. Section 13.081, Water Code, is amended to
7 read as follows:

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

18 SECTION 2.12. Section 13.082, Water Code, is amended to
19 read as follows:

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

26 (b) If a municipality does not surrender its jurisdiction,
27 local utility service within the boundaries of the municipality

1 shall be exempt from regulation by the utility commission under
2 this chapter to the extent that this chapter applies to local
3 service, and the municipality shall have, regarding service within
4 its boundaries, the right to exercise the same regulatory powers
5 under the same standards and rules as the utility commission or
6 other standards and rules not inconsistent with them. The utility
7 commission's rules relating to service and response to requests for
8 service for utilities operating within a municipality's corporate
9 limits apply unless the municipality adopts its own rules.

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

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

22 (e) This section does not limit the duty and power of the
23 utility commission to regulate service and rates of municipally
24 regulated water and sewer utilities for service provided to other
25 areas in Texas.

26 SECTION 2.13. Section 13.085, Water Code, is amended to
27 read as follows:

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

10 SECTION 2.14. Section 13.087(c), Water Code, is amended to
11 read as follows:

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

14 SECTION 2.15. Sections 13.131(a), (b), (c), and (e), Water
15 Code, are amended to read as follows:

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

26 (b) In the case of a utility subject to regulation by a
27 federal regulatory agency, compliance with the system of accounts

1 prescribed for the particular class of utilities by that agency may
2 be considered a sufficient compliance with the system prescribed by
3 the utility commission. However, the utility commission may
4 prescribe forms of books, accounts, records, and memoranda covering
5 information in addition to that required by the federal agency. The
6 system of accounts and the forms of books, accounts, records, and
7 memoranda prescribed by the utility commission for a utility or
8 class of utilities may not conflict or be inconsistent with the
9 systems and forms established by a federal agency for that utility
10 or class of utilities.

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

24 (e) Every utility is required to keep and render its books,
25 accounts, records, and memoranda accurately and faithfully in the
26 manner and form prescribed by the utility commission and to comply
27 with all directions of the regulatory authority relating to those

1 books, accounts, records, and memoranda. The regulatory authority
2 may require the examination and audit of all accounts.

3 SECTION 2.16. Section 13.132, Water Code, is amended to
4 read as follows:

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

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

11 (2) establish forms for all reports;

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

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

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

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

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

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

5 SECTION 2.17. Section 13.133(b), Water Code, is amended to
6 read as follows:

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

14 SECTION 2.18. Sections 13.136(b) and (c), Water Code, are
15 amended to read as follows:

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

18 (c) Every water supply or sewer service corporation shall
19 file with the utility commission tariffs showing all rates that are
20 subject to the appellate jurisdiction of the utility commission and
21 that are in force at the time for any utility service, product, or
22 commodity offered. Every water supply or sewer service corporation
23 shall file with and as a part of those tariffs all rules and
24 regulations relating to or affecting the rates, utility service,
25 product, or commodity furnished. The filing required under this
26 subsection shall be for informational purposes only.

27 SECTION 2.19. Section 13.137, Water Code, is amended to

1 read as follows:

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

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

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

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

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

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

24 (c) Books, accounts, records, or memoranda required by the
25 regulatory authority to be kept in the state may not be removed from
26 the state, except on conditions prescribed by the utility
27 commission.

1 SECTION 2.20. Section 13.139(b), Water Code, is amended to
2 read as follows:

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

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

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

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

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

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

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

27 SECTION 2.22. Section 13.142(b), Water Code, is amended to

1 read as follows:

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

5 SECTION 2.23. Section 13.144, Water Code, is amended to
6 read as follows:

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

21 SECTION 2.24. Section 13.147(a), Water Code, is amended to
22 read as follows:

23 (a) A retail public utility providing water service may
24 contract with a retail public utility providing sewer service to
25 bill and collect the sewer service provider's fees and payments as
26 part of a consolidated process with the billing and collection of
27 the water service provider's fees and payments. The water service

1 provider may provide that service only for customers who are served
2 by both providers in an area covered by both providers'
3 certificates of public convenience and necessity. If the water
4 service provider refuses to enter into a contract under this
5 section or if the water service provider and sewer service provider
6 cannot agree on the terms of a contract, the sewer service provider
7 may petition the utility commission to issue an order requiring the
8 water service provider to provide that service.

9 SECTION 2.25. Section 13.181(b), Water Code, is amended to
10 read as follows:

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

27 SECTION 2.26. Sections 13.182(c) and (d), Water Code, are

1 amended to read as follows:

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

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

10 SECTION 2.27. Section 13.183(d), Water Code, is amended to
11 read as follows:

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

16 SECTION 2.28. Section 13.184(a), Water Code, is amended to
17 read as follows:

18 (a) Unless the utility commission establishes alternate
19 rate methodologies in accordance with Section 13.183(c), the
20 utility commission may not prescribe any rate that will yield more
21 than a fair return on the invested capital used and useful in
22 rendering service to the public. The governing body of a
23 municipality exercising its original jurisdiction over rates and
24 services may use alternate ratemaking methodologies established by
25 ordinance or by utility commission rule in accordance with Section
26 13.183(c). Unless the municipal regulatory authority uses
27 alternate ratemaking methodologies established by ordinance or by

1 utility commission rule in accordance with Section 13.183(c), it
2 may not prescribe any rate that will yield more than a fair return
3 on the invested capital used and useful in rendering service to the
4 public.

5 SECTION 2.29. Sections 13.187(d), (k), and (o), Water Code,
6 are amended to read as follows:

7 (d) Except as provided by Subsection (d-1), if the
8 application or the statement of intent is not substantially
9 complete or does not comply with the regulatory authority's rules,
10 it may be rejected and the effective date of the rate change may be
11 suspended until a properly completed application is accepted by the
12 regulatory authority and a proper statement of intent is provided.
13 The utility commission may also suspend the effective date of any
14 rate change if the utility does not have a certificate of public
15 convenience and necessity or a completed application for a
16 certificate or to transfer a certificate pending before the utility
17 commission or if the utility is delinquent in paying the assessment
18 and any applicable penalties or interest required by Section
19 5.701(n) [~~of this code~~].

20 (k) If the regulatory authority receives at least the number
21 of complaints from ratepayers required for the regulatory authority
22 to set a hearing under Subsection (e), the regulatory authority
23 may, pending the hearing and a decision, suspend the date the rate
24 change would otherwise be effective. Except as provided by
25 Subsection (d-1), the proposed rate may not be suspended for longer
26 than:

27 (1) 90 days by a local regulatory authority; or

1 (2) 150 days by the utility commission.

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

8 SECTION 2.30. Section 13.188(a), Water Code, is amended to
9 read as follows:

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

20 SECTION 2.31. Sections 13.241(a) and (d), Water Code, are
21 amended to read as follows:

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

26 (d) Before the utility commission grants a new certificate
27 of convenience and necessity for an area which would require

1 construction of a physically separate water or sewer system, the
2 applicant must demonstrate to the utility commission that
3 regionalization or consolidation with another retail public
4 utility is not economically feasible.

5 SECTION 2.32. Sections 13.242(a) and (c), Water Code, are
6 amended to read as follows:

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

21 (c) The utility commission may by rule allow a municipality
22 or utility or water supply corporation to render retail water
23 service without a certificate of public convenience and necessity
24 if the municipality has given notice under Section 13.255 [~~of this~~
25 ~~code~~] that it intends to provide retail water service to an area or
26 if the utility or water supply corporation has less than 15
27 potential connections and is not within the certificated area of

1 another retail public utility.

2 SECTION 2.33. Section 13.244, Water Code, is amended to
3 read as follows:

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

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

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

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

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

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

1 (B) the Texas State Plane Coordinate System;

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

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

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

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

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

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

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

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

19 (A) at least 50 acres; and

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

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

23 SECTION 2.34. Sections 13.245(b), (c), and (e), Water Code,
24 are amended to read as follows:

25 (b) Except as provided by Subsection (c), the utility
26 commission may not grant to a retail public utility a certificate of
27 public convenience and necessity for a service area within the

1 boundaries or extraterritorial jurisdiction of a municipality
2 without the consent of the municipality. The municipality may not
3 unreasonably withhold the consent. As a condition of the consent, a
4 municipality may require that all water and sewer facilities be
5 designed and constructed in accordance with the municipality's
6 standards for facilities.

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

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

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

24 SECTION 2.35. Section 13.2451(c), Water Code, is amended to
25 read as follows:

26 (c) The utility commission, after notice to the
27 municipality and an opportunity for a hearing, may decertify an

1 area outside a municipality's extraterritorial jurisdiction if the
2 municipality does not provide service to the area on or before the
3 fifth anniversary of the date the certificate of public convenience
4 and necessity was granted for the area. This subsection does not
5 apply to a certificate of public convenience and necessity for an
6 area:

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

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

11 SECTION 2.36. Sections 13.246(a), (a-1), (b), (c), (d),
12 (f), (h), and (i), Water Code, are amended to read as follows:

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

22 (a-1) Except as otherwise provided by this subsection, in
23 addition to the notice required by Subsection (a), the utility
24 commission shall require notice to be mailed to each owner of a
25 tract of land that is at least 25 acres and is wholly or partially
26 included in the area proposed to be certified. Notice required
27 under this subsection must be mailed by first class mail to the

1 owner of the tract according to the most current tax appraisal rolls
2 of the applicable central appraisal district at the time the
3 utility commission received the application for the certificate or
4 amendment. Good faith efforts to comply with the requirements of
5 this subsection shall be considered adequate notice to landowners.
6 Notice under this subsection is not required for a matter filed with
7 the utility commission or the commission under:

8 (1) Section 13.248 or 13.255; or

9 (2) Chapter 65.

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

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

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

26 (2) the need for additional service in the requested
27 area, including whether any landowners, prospective landowners,

1 tenants, or residents have requested service;

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

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

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

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

16 (7) environmental integrity;

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

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

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

26 (f) If two or more retail public utilities or water supply
27 or sewer service corporations apply for a certificate of public

1 convenience and necessity to provide water or sewer utility service
2 to an uncertificated area located in an economically distressed
3 area and otherwise meet the requirements for obtaining a new
4 certificate, the utility commission shall grant the certificate to
5 the retail public utility or water supply or sewer service
6 corporation that is more capable financially, managerially, and
7 technically of providing continuous and adequate service.

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

21 (i) A landowner is not entitled to make an election under
22 Subsection (h) but is entitled to contest the inclusion of the
23 landowner's property in the proposed service area at a hearing held
24 by the utility commission regarding the application if the proposed
25 service area is located within the boundaries or extraterritorial
26 jurisdiction of a municipality with a population of more than
27 500,000 and the municipality or a utility owned by the municipality

1 is the applicant.

2 SECTION 2.37. Section 13.247(a), Water Code, is amended to
3 read as follows:

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

18 SECTION 2.38. Section 13.248, Water Code, is amended to
19 read as follows:

20 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts
21 between retail public utilities designating areas to be served and
22 customers to be served by those retail public utilities, when
23 approved by the utility commission after public notice and hearing,
24 are valid and enforceable and are incorporated into the appropriate
25 areas of public convenience and necessity.

26 SECTION 2.39. Sections 13.250(b), (c), and (e), Water Code,
27 are amended to read as follows:

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

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

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

16 (3) nonuse; or

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

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

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

27 SECTION 2.40. Section 13.2502(d), Water Code, is amended to

1 read as follows:

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

4 SECTION 2.41. Section 13.251, Water Code, is amended to
5 read as follows:

6 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.
7 Except as provided by Section 13.255 [~~of this code~~], a utility or a
8 water supply or sewer service corporation may not sell, assign, or
9 lease a certificate of public convenience and necessity or any
10 right obtained under a certificate unless the commission has
11 determined that the purchaser, assignee, or lessee is capable of
12 rendering adequate and continuous service to every consumer within
13 the certified area, after considering the factors under Section
14 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be
15 on the conditions prescribed by the utility commission.

16 SECTION 2.42. Section 13.252, Water Code, is amended to
17 read as follows:

18 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.
19 If a retail public utility in constructing or extending a line,
20 plant, or system interferes or attempts to interfere with the
21 operation of a line, plant, or system of any other retail public
22 utility, or furnishes, makes available, renders, or extends retail
23 water or sewer utility service to any portion of the service area of
24 another retail public utility that has been granted or is not
25 required to possess a certificate of public convenience and
26 necessity, the utility commission may issue an order prohibiting
27 the construction, extension, or provision of service or prescribing

1 terms and conditions for locating the line, plant, or system
2 affected or for the provision of the service.

3 SECTION 2.43. Section 13.253, Water Code, is amended to
4 read as follows:

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

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

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

17 (B) develop, implement, and follow financial,
18 managerial, and technical practices that are acceptable to the
19 utility commission to ensure that continuous and adequate service
20 is provided to any areas currently certificated to the retail
21 public utility if the retail public utility has not provided
22 continuous and adequate service to any of those areas and, for a
23 utility, to provide financial assurance of the utility's ability to
24 operate the system in accordance with applicable laws and rules, in
25 the form of a bond or other financial assurance in a form and amount
26 specified by the utility commission;

27 (2) order two or more public utilities or water supply

1 or sewer service corporations to establish specified facilities for
2 interconnecting service;

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

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

12 (b) If the utility commission has reason to believe that
13 improvements and repairs to a water or sewer service system are
14 necessary to enable a retail public utility to provide continuous
15 and adequate service in any portion of its service area and the
16 retail public utility has provided financial assurance under
17 Section 341.0355, Health and Safety Code, or under this chapter,
18 the utility commission, after providing to the retail public
19 utility notice and an opportunity to be heard by the commissioners
20 at a [~~commission~~] meeting of the utility commission, may
21 immediately order specified improvements and repairs to the water
22 or sewer system, the costs of which may be paid by the bond or other
23 financial assurance in an amount determined by the utility
24 commission not to exceed the amount of the bond or financial
25 assurance. The order requiring the improvements may be an
26 emergency order if it is issued after the retail public utility has
27 had an opportunity to be heard [~~by the commissioners~~] at a

1 [~~commission~~] meeting of the utility commission. After notice and
2 hearing, the utility commission may require a retail public utility
3 to obligate additional money to replace the financial assurance
4 used for the improvements.

5 SECTION 2.44. Section 13.254, Water Code, is amended to
6 read as follows:

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

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

17 (2) in an affected county as defined in Section
18 16.341, the cost of providing service by the certificate holder is
19 so prohibitively expensive as to constitute denial of service,
20 provided that, for commercial developments or for residential
21 developments started after September 1, 1997, in an affected county
22 as defined in Section 16.341, the fact that the cost of obtaining
23 service from the currently certificated retail public utility makes
24 the development economically unfeasible does not render such cost
25 prohibitively expensive in the absence of other relevant factors;

26 (3) the certificate holder has agreed in writing to
27 allow another retail public utility to provide service within its

1 service area, except for an interim period, without amending its
2 certificate; or

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

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

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

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

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

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

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

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

7 (3) the certificate holder:

8 (A) has refused to provide the service;

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

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

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

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

26 (1) within the boundaries of any municipality or the
27 extraterritorial jurisdiction of a municipality with a population

1 of more than 500,000 and the municipality or retail public utility
2 owned by the municipality is the holder of the certificate; or

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

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

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

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

1 under Section 13.242(c).

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

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

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

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

1 public utility seeking to serve the area.

2 (g) For the purpose of implementing this section, the value
3 of real property owned and utilized by the retail public utility for
4 its facilities shall be determined according to the standards set
5 forth in Chapter 21, Property Code, governing actions in eminent
6 domain and the value of personal property shall be determined
7 according to the factors in this subsection. The factors ensuring
8 that the compensation to a retail public utility is just and
9 adequate shall include: the amount of the retail public utility's
10 debt allocable for service to the area in question; the value of the
11 service facilities of the retail public utility located within the
12 area in question; the amount of any expenditures for planning,
13 design, or construction of service facilities that are allocable to
14 service to the area in question; the amount of the retail public
15 utility's contractual obligations allocable to the area in
16 question; any demonstrated impairment of service or increase of
17 cost to consumers of the retail public utility remaining after the
18 decertification; the impact on future revenues lost from existing
19 customers; necessary and reasonable legal expenses and
20 professional fees; and other relevant factors. The utility
21 commission shall adopt rules governing the evaluation of these
22 factors.

23 (g-1) If the retail public utilities cannot agree on an
24 independent appraiser within 10 calendar days after the date on
25 which the retail public utility notifies the utility commission of
26 its intent to provide service to the decertified area, each retail
27 public utility shall engage its own appraiser at its own expense,

1 and each appraisal shall be submitted to the utility commission
2 within 60 calendar days. After receiving the appraisals, the
3 utility commission shall appoint a third appraiser who shall make a
4 determination of the compensation within 30 days. The determination
5 may not be less than the lower appraisal or more than the higher
6 appraisal. Each retail public utility shall pay half the cost of
7 the third appraisal.

8 SECTION 2.45. Sections 13.255(a), (b), (c), (d), (e),
9 (g-1), (k), (l), and (m), Water Code, are amended to read as
10 follows:

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

1 incorporate the terms of the agreement into the respective
2 certificates of convenience and necessity of the parties to the
3 agreement.

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

17 (c) The utility commission shall grant single certification
18 to the municipality. The utility commission shall also determine
19 whether single certification as requested by the municipality would
20 result in property of a retail public utility being rendered
21 useless or valueless to the retail public utility, and shall
22 determine in its order the monetary amount that is adequate and just
23 to compensate the retail public utility for such property. If the
24 municipality in its application has requested the transfer of
25 specified property of the retail public utility to the municipality
26 or to a franchised utility, the utility commission shall also
27 determine in its order the adequate and just compensation to be paid

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

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

1 (1) transfers to the municipally owned utility or
2 franchised utility title to property to be transferred to the
3 municipally owned utility or franchised utility as delineated by
4 the utility commission's final order and property determined by the
5 utility commission to be rendered useless or valueless by the
6 granting of single certification; and

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

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

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

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

1 (g-1) The utility commission shall adopt rules governing
2 the evaluation of the factors to be considered in determining the
3 monetary compensation under Subsection (g). The utility commission
4 by rule shall adopt procedures to ensure that the total
5 compensation to be paid to a retail public utility under Subsection
6 (g) is determined not later than the 90th calendar day after the
7 date on which the utility commission determines that the
8 municipality's application is administratively complete.

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

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

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

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

24 (1) For an area incorporated by a municipality, the
25 compensation provided under Subsection (g) shall be determined by a
26 qualified individual or firm to serve as independent appraiser, who
27 shall be selected by the affected retail public utility, and the

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

26 (m) The utility commission shall deny an application for
27 single certification by a municipality that fails to demonstrate

1 compliance with the utility commission's minimum requirements for
2 public drinking water systems.

3 SECTION 2.46. Section 13.2551, Water Code, is amended to
4 read as follows:

5 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
6 condition to decertification or single certification under Section
7 13.254 or 13.255, and on request by an affected retail public
8 utility, the utility commission may order:

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

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

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

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

27 (1) transferring debt and other contract obligations;

- 1 (2) transferring real and personal property;
- 2 (3) establishing interim service rates for affected
- 3 customers during specified times; and
- 4 (4) other provisions necessary for the just and
- 5 reasonable allocation of assets and liabilities.

6 (d) The retail public utility seeking decertification shall

7 not charge the affected customers any transfer fee or other fee to

8 obtain service other than the retail public utility's usual and

9 customary rates for monthly service or the interim rates set by the

10 utility commission, if applicable.

11 (e) The utility commission shall not order compensation to

12 the decertificated retail utility if service to the entire service

13 area is ordered under this section.

14 SECTION 2.47. Sections 13.257(e), (i), (r), and (s), Water

15 Code, are amended to read as follows:

16 (e) The notice must be given to the prospective purchaser

17 before the execution of a binding contract of purchase and sale.

18 The notice may be given separately or as an addendum to or paragraph

19 of the contract. If the seller fails to provide the notice required

20 by this section, the purchaser may terminate the contract. If the

21 seller provides the notice at or before the closing of the purchase

22 and sale contract and the purchaser elects to close even though the

23 notice was not timely provided before the execution of the

24 contract, it is conclusively presumed that the purchaser has waived

25 all rights to terminate the contract and recover damages or pursue

26 other remedies or rights under this section. Notwithstanding any

27 provision of this section to the contrary, a seller, title

1 insurance company, real estate broker, or examining attorney, or an
2 agent, representative, or person acting on behalf of the seller,
3 company, broker, or attorney, is not liable for damages under
4 Subsection (m) or (n) or liable for any other damages to any person
5 for:

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

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

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

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

23 (i) If the notice is given at closing as provided by
24 Subsection (g), a purchaser, or the purchaser's heirs, successors,
25 or assigns, may not maintain an action for damages or maintain an
26 action against a seller, title insurance company, real estate
27 broker, or lienholder, or any agent, representative, or person

1 acting on behalf of the seller, company, broker, or lienholder, by
2 reason of the seller's use of the information filed with the utility
3 commission by the utility service provider or the seller's use of
4 the map of the certificated service area of the utility service
5 provider filed in the real property records to determine whether
6 the property to be purchased is within the certificated service
7 area of the utility service provider. An action may not be
8 maintained against a title insurance company for the failure to
9 disclose that the described real property is included within the
10 certificated service area of a utility service provider if the
11 utility service provider did not file in the real property records
12 or with the utility commission the map of the certificated service
13 area.

14 (r) A utility service provider shall:

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

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

24 (B) the Texas State Plane Coordinate System;

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

27 (D) if a recorded plat of the area exists, lot and

1 block number; and

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

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

14 SECTION 2.48. Sections 13.301(a), (b), (c), (d), (e), (f),
15 and (g), Water Code, are amended to read as follows:

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

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

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

1 (b) The utility commission may require that the person
2 purchasing or acquiring the water or sewer system demonstrate
3 adequate financial, managerial, and technical capability for
4 providing continuous and adequate service to the requested area and
5 any areas currently certificated to the person.

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

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

15 (e) Before the expiration of the 120-day notification
16 period, the executive director of the utility commission shall
17 notify all known parties to the transaction whether [~~of~~] the
18 executive director of the utility commission will [~~director's~~
19 ~~decision whether to~~] request that the utility commission hold a
20 public hearing to determine if the transaction will serve the
21 public interest. The executive director of the utility commission
22 may request a hearing if:

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

25 (2) the person purchasing or acquiring the water or
26 sewer system has not demonstrated adequate financial, managerial,
27 and technical capability for providing continuous and adequate

1 service to the service area being acquired and to any areas
2 currently certificated to the person;

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

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

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

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

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

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

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

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

26 (g) If a hearing is requested or if the utility or water
27 supply or sewer service corporation fails to make the application

1 as required or to provide public notice, the sale, acquisition,
2 lease, or rental may not be completed unless the utility commission
3 determines that the proposed transaction serves the public
4 interest.

5 SECTION 2.49. Section 13.302, Water Code, is amended to
6 read as follows:

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

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

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

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

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

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

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

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

15 SECTION 2.50. Section 13.303, Water Code, is amended to
16 read as follows:

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

23 SECTION 2.51. Section 13.304, Water Code, is amended to
24 read as follows:

25 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that
26 receives notice that all or a portion of the utility's facilities or
27 property used to provide utility service are being posted for

1 foreclosure shall notify the utility commission and the commission
2 in writing of that fact not later than the 10th day after the date on
3 which the utility receives the notice.

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

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

17 SECTION 2.52. Section 13.341, Water Code, is amended to
18 read as follows:

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

27 SECTION 2.53. Section 13.342, Water Code, is amended to

1 read as follows:

2 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING
3 SECURITIES. The utility commission may require the disclosure of
4 the identity and respective interests of every owner of any
5 substantial interest in the voting securities of any utility or its
6 affiliated interest. One percent or more is a substantial interest
7 within the meaning of this section.

8 SECTION 2.54. Section 13.343(a), Water Code, is amended to
9 read as follows:

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

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

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

19 SECTION 2.55. Section 13.381, Water Code, is amended to
20 read as follows:

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

24 SECTION 2.56. Section 13.382(a), Water Code, is amended to
25 read as follows:

26 (a) Any party represented by counsel who alleges that
27 existing rates are excessive or that rates prescribed by the

1 utility commission are excessive and who is a prevailing party in
2 proceedings for review of a utility commission order or decision
3 may in the same action recover against the regulation fund
4 reasonable fees for attorneys and expert witnesses and other costs
5 incurred by him before the utility commission and the court. The
6 amount of the attorney's fees shall be fixed by the court.

7 SECTION 2.57. Section 13.411, Water Code, is amended to
8 read as follows:

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

24 (b) If the executive director of the utility commission or
25 the executive director of the commission has reason to believe that
26 the failure of the owner or operator of a water utility to properly
27 operate, maintain, or provide adequate facilities presents an

1 imminent threat to human health or safety, the executive director
2 of the utility commission or the executive director of the
3 commission shall immediately:

- 4 (1) notify the utility's representative; and
- 5 (2) initiate enforcement action consistent with:
 - 6 (A) this subchapter; and
 - 7 (B) procedural rules adopted by the utility
8 commission or the commission.

9 SECTION 2.58. Section 13.4115, Water Code, is amended to
10 read as follows:

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

21 SECTION 2.59. Sections 13.412(a), (f), and (g), Water Code,
22 are amended to read as follows:

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

- 27 (1) has abandoned operation of its facilities;

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

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

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

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

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

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

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

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

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

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

26 (7) failure to provide the utility commission or the
27 commission with adequate information on how to contact the utility

1 for normal business and emergency purposes.

2 (g) Notwithstanding Section 64.021, Civil Practice and
3 Remedies Code, a receiver appointed under this section may seek
4 [~~commission~~] approval from the utility commission and the
5 commission to acquire the water or sewer utility's facilities and
6 transfer the utility's certificate of convenience and necessity.
7 The receiver must apply in accordance with Subchapter H.

8 SECTION 2.60. Section 13.413, Water Code, is amended to
9 read as follows:

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

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

25 SECTION 2.61. Section 13.4131, Water Code, is amended to
26 read as follows:

27 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The

1 utility commission, after providing to the utility notice and an
2 opportunity for a hearing, may place a utility under supervision
3 for gross or continuing mismanagement, gross or continuing
4 noncompliance with this chapter or a rule adopted under this
5 chapter [~~commission rules~~], or noncompliance with an order issued
6 under this chapter [~~commission orders~~].

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

- 10 (1) management requirements;
- 11 (2) additional reporting requirements;
- 12 (3) restrictions on hiring, salary or benefit
13 increases, capital investment, borrowing, stock issuance or
14 dividend declarations, and liquidation of assets; and
- 15 (4) a requirement that the utility place the utility's
16 funds into an account in a financial institution approved by the
17 utility commission and use of those funds shall be restricted to
18 reasonable and necessary utility expenses.

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

25 SECTION 2.62. Sections 13.4133(a) and (c), Water Code, are
26 amended to read as follows:

27 (a) Notwithstanding the requirements of Section 13.187 [~~of~~

1 ~~this code~~], the utility commission may authorize an emergency rate
2 increase for a utility for which a person has been appointed under
3 Section 13.4132 [~~of this code~~] or for which a receiver has been
4 appointed under Section 13.412 [~~of this code~~] if the increase is
5 necessary to ensure the provision of continuous and adequate
6 services to the utility's customers.

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

15 SECTION 2.63. Sections 13.414(a) and (c), Water Code, are
16 amended to read as follows:

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

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

27 SECTION 2.64. Sections 13.4151(a), (b), (c), (d), (e), (f),

1 (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as
2 follows:

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

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

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

15 (2) with respect to the alleged violator:

16 (A) the history and extent of previous
17 violations;

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

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

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

27 (E) the amount necessary to deter future

1 violations; and

2 (3) any other matters that justice requires.

3 (c) If, after examination of a possible violation and the
4 facts surrounding that possible violation, the executive director
5 of the utility commission or the executive director of the
6 commission concludes that a violation has occurred, the executive
7 director of the utility commission or the executive director of the
8 commission may issue a preliminary report stating the facts on
9 which that conclusion is based, recommending that a penalty under
10 this section be imposed on the person, affiliated interest, or
11 retail public utility charged, and recommending the amount of that
12 proposed penalty. The executive director of the utility commission
13 or the executive director of the commission shall base the
14 recommended amount of the proposed penalty on the factors provided
15 by Subsection (b) [~~of this section~~], and shall analyze each factor
16 for the benefit of the agency [~~commission~~].

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

27 (e) Not later than the 20th day after the date on which

1 notice is received, the person, affiliated interest, or retail
2 public utility charged may give the agency [~~commission~~] written
3 consent to the [~~executive director's~~] report described by
4 Subsection (d), including the recommended penalty, or may make a
5 written request for a hearing.

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

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

1 (h) The utility commission or the commission shall give
2 notice of its decision to the person, affiliated interest, or
3 retail public utility charged, and if the agency [~~commission~~] finds
4 that a violation has occurred and has assessed a penalty, the
5 agency [~~the commission~~] shall give written notice to the person,
6 affiliated interest, or retail public utility charged of its
7 findings, of the amount of the penalty, and of the person's,
8 affiliated interest's, or retail public utility's right to judicial
9 review of the agency's [~~commission's~~] order. If the agency
10 [~~commission~~] is required to give notice of a penalty under this
11 subsection or Subsection (f) [~~of this section~~], the agency
12 [~~commission~~] shall file notice of the agency's [~~its~~] decision in
13 the Texas Register not later than the 10th day after the date on
14 which the decision is adopted.

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

19 (1) pay the penalty in full; or

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

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

25 (B) post with the agency [~~commission~~] a
26 supersedeas bond in a form approved by the agency [~~commission~~] for
27 the amount of the penalty to be effective until all judicial review

1 of the order or decision is final.

2 (j) Failure to forward the money to or to post the bond with
3 the agency [~~commission~~] within the time provided by Subsection (i)
4 [~~of this section~~] constitutes a waiver of all legal rights to
5 judicial review. If the person, affiliated interest, or retail
6 public utility charged fails to forward the money or post the bond
7 as provided by Subsection (i) [~~of this section~~], the agency
8 [~~commission~~] or the executive director of the agency may forward
9 the matter to the attorney general for enforcement.

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

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

19 SECTION 2.65. Section 13.417, Water Code, is amended to
20 read as follows:

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

1 SECTION 2.66. Section 13.418, Water Code, is amended to
2 read as follows:

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

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

13 SECTION 2.67. Section 13.501(7), Water Code, is amended to
14 read as follows:

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

19 SECTION 2.68. Section 13.502(e), Water Code, is amended to
20 read as follows:

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

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

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

3 SECTION 2.69. Sections 13.503(a), (b), and (e), Water Code,
4 are amended to read as follows:

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

8 (b) Notwithstanding any other law, the utility commission
9 shall adopt rules and standards under which an owner, operator, or
10 manager of an apartment house, manufactured home rental community,
11 or multiple use facility that is not individually metered for water
12 for each rental or dwelling unit may install submetering equipment
13 for each individual rental or dwelling unit for the purpose of
14 fairly allocating the cost of each individual rental or dwelling
15 unit's water consumption, including wastewater charges based on
16 water consumption. In addition to other appropriate safeguards for
17 the tenant, the rules shall require that, except as provided by this
18 section, an apartment house owner, manufactured home rental
19 community owner, multiple use facility owner, or condominium
20 manager may not impose on the tenant any extra charges, over and
21 above the cost per gallon and any other applicable taxes and
22 surcharges that are charged by the retail public utility to the
23 owner or manager, and that the rental unit or apartment house owner
24 or manager shall maintain adequate records regarding submetering
25 and make the records available for inspection by the tenant during
26 reasonable business hours. The rules shall allow an owner or
27 manager to charge a tenant a fee for late payment of a submetered

1 water bill if the amount of the fee does not exceed five percent of
2 the bill paid late. All submetering equipment is subject to the
3 rules and standards established by the utility commission for
4 accuracy, testing, and record keeping of meters installed by
5 utilities and to the meter-testing requirements of Section 13.140
6 [~~of this code~~].

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

13 SECTION 2.70. Section 13.5031, Water Code, is amended to
14 read as follows:

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

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

27 (2) the rental agreement contain a statement of the

1 average manufactured home, apartment, or multiple use facility unit
2 monthly bill for all units for any allocation of those utilities for
3 the previous calendar year;

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

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

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

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

23 SECTION 2.71. Section 13.505, Water Code, is amended to
24 read as follows:

25 Sec. 13.505. ENFORCEMENT. In addition to the enforcement
26 provisions contained in Subchapter K [~~of this chapter~~], if an
27 apartment house owner, condominium manager, manufactured home

1 rental community owner, or other multiple use facility owner
2 violates a rule of the utility commission regarding submetering of
3 utility service consumed exclusively within the tenant's dwelling
4 unit or multiple use facility unit or nonsubmetered master metered
5 utility costs, the tenant may recover three times the amount of any
6 overcharge, a civil penalty equal to one month's rent, reasonable
7 attorney's fees, and court costs from the owner or condominium
8 manager. However, an owner of an apartment house, manufactured
9 home rental community, or other multiple use facility or
10 condominium manager is not liable for a civil penalty if the owner
11 or condominium manager proves the violation was a good faith,
12 unintentional mistake.

13 SECTION 2.72. Section 13.512, Water Code, is amended to
14 read as follows:

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

25 SECTION 2.73. Section 13.513, Water Code, is amended to
26 read as follows:

27 Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE

1 PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider
2 shall not constitute a "water and sewer utility," a "public
3 utility," a "utility," or a "retail public utility" within the
4 meaning of Chapter 13 as a result of entering into or performing a
5 privatization contract, if the governing body of the eligible city
6 shall so elect by ordinance and provide notice thereof in writing to
7 the utility commission; provided, however, this provision shall
8 not affect the application of Chapter 13 to an eligible city itself.
9 Notwithstanding anything contained in this section, any service
10 provider who seeks to extend or render sewer service to any person
11 or municipality other than, or in addition to, an eligible city may
12 be a "public utility" for the purposes of Chapter 13 with respect to
13 such other person or municipality.

14 SECTION 2.74. (a) On March 1, 2012, the following are
15 transferred from the Texas Commission on Environmental Quality to
16 the Public Utility Commission of Texas:

17 (1) the powers, duties, functions, programs, and
18 activities of the Texas Commission on Environmental Quality
19 relating to the economic regulation of water and sewer utilities,
20 including the issuance and transfer of certificates of convenience
21 and necessity, the determination of rates, and the administration
22 of hearings and proceedings involving those matters, under Chapter
23 13, Water Code, as provided by this article;

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

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

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

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

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

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

23 (c) The executive directors of the Texas Commission on
24 Environmental Quality and the Public Utility Commission of Texas
25 may agree in the memorandum of understanding under this section to
26 transfer to the Public Utility Commission of Texas any personnel of
27 the Texas Commission on Environmental Quality whose functions

1 predominantly involve powers, duties, obligations, functions, and
2 activities related to the regulation of water and sewer utilities
3 under Chapter 13, Water Code, as amended by this article.

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

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

17 (e) A rule, form, policy, procedure, or decision of the
18 Texas Commission on Environmental Quality related to a power, duty,
19 function, program, or activity transferred under this article
20 continues in effect as a rule, form, policy, procedure, or decision
21 of the Public Utility Commission of Texas and remains in effect
22 until amended or replaced by that agency.

23 (f) The memorandum required by this section must be
24 completed by February 1, 2012.

25 (g) The Public Utility Commission of Texas and the Texas
26 Commission on Environmental Quality shall adopt rules to implement
27 the changes in law made by this article to Chapter 13, Water Code,

1 not later than September 1, 2012.

2 SECTION 2.75. (a) The Public Utility Commission of Texas
3 shall conduct a comparative analysis of the ratemaking authority of
4 the commission before the effective date of this Act and the
5 ratemaking authority of the commission after the transition
6 described in Section 2.74 of this article, to identify potential
7 for procedural standardization. The Public Utility Commission of
8 Texas shall issue a report of the analysis, with recommendations
9 regarding rate standardization, for consideration by the 83rd
10 Legislature.

11 (b) The Public Utility Commission of Texas shall prepare a
12 report describing staffing changes related to the transition
13 described in Section 2.74 of this article, including reductions in
14 staff that the commission may realize as a result of consolidated
15 functions. The Public Utility Commission of Texas shall submit the
16 report to the Legislative Budget Board and the governor with the
17 legislative appropriations request for the 2014-2015 biennium.

18 ARTICLE 3. EFFECTIVE DATE

19 SECTION 3.01. This Act takes effect September 1, 2011.