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S.B. No. 567

A BILL TO BE ENTITLED

AN ACT

1
2 relating to rates for water service, to the transfer of functions
3 relating to the economic regulation of water and sewer service from
4 the Texas Commission on Environmental Quality to the Public Utility
5 Commission of Texas, and to the duties of the Office of Public
6 Utility Counsel regarding the economic regulation of water and
7 sewer service.

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

9 SECTION 1. Subsection (a), Section 5.013, Water Code, is
10 amended to read as follows:

11 (a) The commission has general jurisdiction over:

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

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

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

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

23 (5) the adoption and enforcement of rules and
24 performance of other acts relating to the safe construction,

1 maintenance, and removal of dams;

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

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

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

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

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

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

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

18 [~~13~~] any other areas assigned to the commission by
19 this code and other laws of this state.

20 SECTION 2. Subsection (a), Section 5.311, Water Code, is
21 amended to read as follows:

22 (a) The commission may delegate to an administrative law
23 judge of the State Office of Administrative Hearings the
24 responsibility to hear any matter before the commission ~~[and to
25 issue interlocutory orders related to interim rates under Chapter
26 13].~~

27 SECTION 3. Section 5.507, Water Code, is amended to read as

1 follows:

2 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
3 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
4 The ~~commission~~ or the Public Utility Commission of Texas may issue
5 an emergency order appointing a willing person to temporarily
6 manage and operate a utility under Section 13.4132. Notice of the
7 action is adequate if the notice is mailed or hand delivered to the
8 last known address of the utility's headquarters.

9 SECTION 4. Subsections (a) and (c), Section 5.508, Water
10 Code, are amended to read as follows:

11 (a) Notwithstanding the requirements of Subchapter F,
12 Chapter 13 [~~Section 13.187~~], the Public Utility Commission of Texas
13 [~~commission~~] may authorize an emergency rate increase for a utility
14 for which a person has been appointed under Section 5.507 or 13.4132
15 [~~13.412~~] or for which a receiver has been appointed under Section
16 13.412 [~~13.4132~~] if the increase is necessary to ensure the
17 provision of continuous and adequate services to the utility's
18 customers. The Public Utility Commission of Texas shall consult
19 with the commission as needed to carry out this section.

20 (c) Notwithstanding Section 5.505, an order may be issued
21 under this section for a term not to exceed 15 months. The Public
22 Utility Commission of Texas [~~commission~~] shall schedule a hearing
23 to establish a final rate within 15 months after the date on which
24 an emergency rate increase takes effect. The additional revenues
25 collected under an emergency rate increase are subject to refund if
26 the utility commission finds that the rate increase was larger than
27 necessary to ensure continuous and adequate service.

1 SECTION 5. Section 11.002, Water Code, is amended by adding
2 Subdivision (21) to read as follows:

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

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

7 (f) The commission shall hold a hearing on the complaint at
8 the time and place stated in the order. It may hear evidence orally
9 or by affidavit in support of or against the complaint, and it may
10 hear arguments. The utility commission may participate in the
11 hearing if necessary to present evidence on the price or rental
12 demanded for the available water. On completion of the hearing, the
13 commission shall render a written decision.

14 SECTION 7. Section 12.013, Water Code, is amended to read as
15 follows:

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

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

24 (c) The utility commission in reviewing and fixing
25 reasonable rates for furnishing water under this section may use
26 any reasonable basis for fixing rates as may be determined by the
27 utility commission to be appropriate under the circumstances of the

1 case being reviewed; provided, however, the utility commission may
2 not fix a rate which a political subdivision may charge for
3 furnishing water which is less than the amount required to meet the
4 debt service and bond coverage requirements of that political
5 subdivision's outstanding debt.

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

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

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

18 ~~[(g) No action or proceeding commenced prior to January 1,~~
19 ~~1977, before the Texas Water Rights Commission shall be affected by~~
20 ~~the enactment of this section.~~

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

23 SECTION 8. Section 13.002, Water Code, is amended by
24 amending Subdivisions (2), (18), and (22) and adding Subdivisions
25 (4-a), (4-b), (4-c), and (22-a) to read as follows:

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

27 (A) any person or corporation owning or holding

1 directly or indirectly five percent or more of the voting
2 securities of a utility;

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

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

9 (D) any corporation five percent or more of the
10 voting securities of which is owned or controlled directly or
11 indirectly by any person or corporation that owns or controls
12 directly or indirectly five percent or more of the voting
13 securities of any utility or by any person or corporation in any
14 chain of successive ownership of five percent of those utility
15 securities;

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

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

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

8 (4-a) "Class A utility" means a public utility that
9 provides retail water or sewer utility service through 10,000 or
10 more taps or connections.

11 (4-b) "Class B utility" means a public utility that
12 provides retail water or sewer utility service through 500 or more
13 taps or connections but fewer than 10,000 taps or connections.

14 (4-c) "Class C utility" means a public utility that
15 provides retail water or sewer utility service through fewer than
16 500 taps or connections.

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

20 (22) "Test year" means the most recent 12-month
21 period, beginning on the first day of a calendar or fiscal year
22 quarter, for which [~~representative~~] operating data for a retail
23 public utility are available. [~~A utility rate filing must be based~~
24 ~~on a test year that ended less than 12 months before the date on~~
25 ~~which the utility made the rate filing.~~]

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

1 SECTION 9. Section 13.004, Water Code, is amended to read as
2 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 10. Section 13.011, Water Code, is amended to read
21 as follows:

22 Sec. 13.011. EMPLOYEES. (a) The utility commission and
23 the executive director of the commission, subject to approval, as
24 applicable, by the utility commission or the commission, shall
25 employ any engineering, accounting, and administrative personnel
26 necessary to carry out each agency's powers and duties under this
27 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 utility commission and the utility commission's
5 staff are responsible for the gathering of information relating to
6 all matters within the jurisdiction of the utility commission under
7 this subchapter. The duties of the utility commission, the
8 executive director, and the staff of the utility commission or
9 commission, as appropriate, include:

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

15 (2) preparation and presentation of evidence before
16 the utility commission or commission, as appropriate, ~~commission~~
17 or its appointed examiner in proceedings;

18 (3) conducting investigations of water and sewer
19 utilities under the jurisdiction of the utility commission or
20 commission, as appropriate ~~commission~~;

21 (4) preparation of recommendations that the utility
22 commission or commission, as appropriate, ~~commission~~ undertake
23 an investigation of any matter within its jurisdiction;

24 (5) preparation of recommendations and a report for
25 inclusion in the annual report of the utility commission or
26 commission, as appropriate ~~commission~~;

27 (6) protection and representation of the public

1 interest [~~7, together with the public interest advocate,~~] before the
2 utility commission or commission, as appropriate [~~commission~~]; and

3 (7) other activities that are reasonably necessary to
4 enable the utility commission and the executive director and the
5 staff of the utility commission or commission, as appropriate, to
6 perform their duties.

7 SECTION 11. Section 13.014, Water Code, is amended to read
8 as follows:

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

13 SECTION 12. Subchapter B, Chapter 13, Water Code, is
14 amended by adding Section 13.017 to read as follows:

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

18 (b) The independent Office of Public Utility Counsel
19 represents the interests of residential and small commercial
20 consumers under this chapter. The office:

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

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

27 (3) may appear or intervene, as a party or otherwise,

1 as a matter of right on behalf of:

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

5 (B) small commercial consumers, as a class, in
6 any proceeding in which the counsellor determines that small
7 commercial consumers are in need of representation, including an
8 alternative dispute resolution proceeding;

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

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

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

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

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

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

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

4 (9) may conduct consumer outreach and education
5 programs for residential and small commercial consumers.

6 (c) This section does not:

7 (1) affect a duty the office is required to perform
8 under other law; or

9 (2) limit the authority of the utility commission to
10 represent residential or small commercial consumers.

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

15 SECTION 13. Section 13.041, Water Code, is amended to read
16 as follows:

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

1 commission as necessary in carrying out its duties related to the
2 regulation of water and sewer utilities.

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

8 (c) The commission and the utility commission may call and
9 hold hearings, administer oaths, receive evidence at hearings,
10 issue subpoenas to compel the attendance of witnesses and the
11 production of papers and documents, and make findings of fact and
12 decisions with respect to administering this chapter or the rules,
13 orders, or other actions of the commission or the utility
14 commission.

15 (c-1) In addition to the powers and duties of the State
16 Office of Administrative Hearings under Title 2, Utilities Code,
17 the utility commission may delegate to an administrative law judge
18 of the State Office of Administrative Hearings the responsibility
19 and authority to issue interlocutory orders related to interim
20 rates under this chapter.

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

23 (1) to compel a water or sewer service provider that
24 has obtained or is required to obtain a certificate of public
25 convenience and necessity to provide continuous and adequate water
26 service, sewer service, or both, if the discontinuance of the
27 service is imminent or has occurred because of the service

1 provider's actions or failure to act; and

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

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

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

16 (g) The regulatory assessment required by Section 5.701(n)
17 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the
18 utility commission under Section 13.043 [~~of this code~~]. The
19 commission has the authority to enforce payment and collection of
20 the regulatory assessment.

21 SECTION 14. Section 13.042, Water Code, is amended to read
22 as follows:

23 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND
24 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the
25 limitations imposed in this chapter and for the purpose of
26 regulating rates and services so that those rates may be fair, just,
27 and reasonable and the services adequate and efficient, the

1 governing body of each municipality has exclusive original
2 jurisdiction over all water and sewer utility rates, operations,
3 and services provided by a water and sewer utility within its
4 corporate limits.

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

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

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

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

26 (f) This subchapter does not give the utility commission
27 power or jurisdiction to regulate or supervise the rates or service

1 of a utility owned and operated by a municipality, directly or
2 through a municipally owned corporation, within its corporate
3 limits or to affect or limit the power, jurisdiction, or duties of a
4 municipality that regulates land and supervises water and sewer
5 utilities within its corporate limits, except as provided by this
6 code.

7 SECTION 15. Subsections (a), (b), (c), (e), (f), (g), (h),
8 and (j), Section 13.043, Water Code, are amended to read as follows:

9 (a) Any party to a rate proceeding before the governing body
10 of a municipality may appeal the decision of the governing body to
11 the utility commission. This subsection does not apply to a
12 municipally owned utility. An appeal under this subsection must be
13 initiated within 90 days after the date of notice of the final
14 decision by the governing body, or within 30 days if the appeal
15 relates to the rates of a Class A utility, by filing a petition for
16 review with the utility commission and by serving copies on all
17 parties to the original rate proceeding. The utility commission
18 shall hear the appeal de novo and shall fix in its final order the
19 rates the governing body should have fixed in the action from which
20 the appeal was taken and may include reasonable expenses incurred
21 in the appeal proceedings. The utility commission may establish
22 the effective date for the utility commission's rates at the
23 original effective date as proposed by the utility provider and may
24 order refunds or allow a surcharge to recover lost revenues. The
25 utility commission may consider only the information that was
26 available to the governing body at the time the governing body made
27 its decision and evidence of reasonable expenses incurred in the

1 appeal proceedings.

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

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

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

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

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

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

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

1 ~~this section~~].

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

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

1 water or sewer service by the filing of a petition by the retail
2 public utility.

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

25 (h) The utility commission may, on a motion by the utility
26 commission [~~executive director~~] or by the appellant under
27 Subsection (a), (b), or (f) [~~of this section~~], establish interim

1 rates to be in effect until a final decision is made.

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

13 SECTION 16. Subsection (b), Section 13.044, Water Code, is
14 amended to read as follows:

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

23 SECTION 17. Section 13.046, Water Code, is amended to read
24 as follows:

25 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR
26 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The
27 utility commission by rule shall establish a procedure that allows

1 a retail public utility that takes over the provision of services
2 for a nonfunctioning retail water or sewer utility service provider
3 to charge a reasonable rate for the services provided to the
4 customers of the nonfunctioning system and to bill the customers
5 for the services at that rate immediately to recover service costs.

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

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

24 SECTION 18. Section 13.081, Water Code, is amended to read
25 as follows:

26 Sec. 13.081. FRANCHISES. This chapter may not be construed
27 as in any way limiting the rights and powers of a municipality to

1 grant or refuse franchises to use the streets and alleys within its
2 limits and to make the statutory charges for their use, but no
3 provision of any franchise agreement may limit or interfere with
4 any power conferred on the utility commission by this chapter. If a
5 municipality performs regulatory functions under this chapter, it
6 may make such other charges as may be provided in the applicable
7 franchise agreement, together with any other charges permitted by
8 this chapter.

9 SECTION 19. Section 13.082, Water Code, is amended to read
10 as follows:

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

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

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

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

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

17 SECTION 20. Section 13.085, Water Code, is amended to read
18 as follows:

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

1 SECTION 21. Subsection (c), Section 13.087, Water Code, is
2 amended to read as follows:

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

5 SECTION 22. Subsections (a), (b), (c), and (e), Section
6 13.131, Water Code, are amended to read as follows:

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

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

1 or class of utilities.

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

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

21 SECTION 23. Section 13.132, Water Code, is amended to read
22 as follows:

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

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

1 administration of this chapter, including any information relating
2 to a transaction between the utility and an affiliated interest
3 inside or outside this state, to the extent that the transaction is
4 subject to the utility commission's jurisdiction;

5 (2) establish forms for all reports;

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

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

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

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

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

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

26 SECTION 24. Section 13.1325, Water Code, is amended to read
27 as follows:

1 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On
 2 request, the utility commission [~~state agency with jurisdiction~~
 3 ~~over rates charged by water and sewer utilities~~] shall provide, at a
 4 reasonable cost, electronic copies of or Internet access to all
 5 information provided to the utility commission [~~agency~~] under
 6 Sections 13.016 and [~~7~~] 13.043 [~~7~~] and Subchapter F [~~13.187~~] to the
 7 extent that the information is available and is not confidential.
 8 Copies of all information provided to the utility commission
 9 [~~agency~~] shall be provided to the Office of Public Utility Counsel,
 10 on request, at no cost to the office.

11 SECTION 25. Subsection (b), Section 13.133, Water Code, is
 12 amended to read as follows:

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

20 SECTION 26. Section 13.136, Water Code, is amended by
 21 amending Subsections (b) and (c) and adding Subsection (b-1) to
 22 read as follows:

23 (b) The utility commission by rule shall require each [~~Each~~
 24 utility to annually [~~shall~~] file a service, [~~and~~] financial, and
 25 normalized earnings report in a form and at times specified by
 26 utility commission rule. The report must include information
 27 sufficient to enable the utility commission to properly monitor

1 utilities in this state. The utility commission shall make
2 available to the public information in the report the utility does
3 not file as confidential.

4 (b-1) The utility commission shall provide copies of a
5 report described by Subsection (b) that include information filed
6 as confidential to the Office of Public Utility Counsel on request,
7 at no cost to the office.

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

17 SECTION 27. Section 13.137, Water Code, is amended to read
18 as follows:

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

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

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

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

1 payments in the county; and

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

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

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

18 SECTION 28. Subsection (b), (c), and (f), Section 13.1396,
19 Water Code, are amended to read as follows:

20 (b) An affected utility shall submit to the office of
21 emergency management of each county in which the utility has more
22 than one customer, the utility commission [~~Public Utility~~
23 ~~Commission of Texas~~], and the office of emergency management of the
24 governor a copy of:

25 (1) the affected utility's emergency preparedness plan
26 approved under Section 13.1395; and

27 (2) the commission's notification to the affected

1 utility that the plan is accepted.

2 (c) Each affected utility shall submit to the utility
3 commission, each electric utility that provides transmission and
4 distribution service to the affected utility, each retail electric
5 provider that sells electric power to the affected utility, the
6 office of emergency management of each county in which the utility
7 has water and wastewater facilities that qualify for critical load
8 status under rules adopted by the utility commission [~~Public~~
9 ~~Utility Commission of Texas, the Public Utility Commission of~~
10 ~~Texas~~], and the division of emergency management of the governor:

11 (1) information identifying the location and
12 providing a general description of all water and wastewater
13 facilities that qualify for critical load status; and

14 (2) emergency contact information for the affected
15 utility, including:

16 (A) the person who will serve as a point of
17 contact and the person's telephone number;

18 (B) the person who will serve as an alternative
19 point of contact and the person's telephone number; and

20 (C) the affected utility's mailing address.

21 (f) Not later than May 1 of each year, each electric utility
22 and each retail electric provider shall determine whether the
23 facilities of the affected utility qualify for critical load status
24 under rules adopted by the utility commission [~~Public Utility~~
25 ~~Commission of Texas~~].

26 SECTION 29. Subsection (b), Section 13.142, Water Code, is
27 amended to read as follows:

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

4 SECTION 30. Section 13.144, Water Code, is amended to read
5 as follows:

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

20 SECTION 31. Subsection (a), Section 13.147, Water Code, is
21 amended to read as follows:

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

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

8 SECTION 32. Subsection (b), Section 13.181, Water Code, is
9 amended to read as follows:

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

26 SECTION 33. Subsections (c) and (d), Section 13.182, Water
27 Code, are amended to read as follows:

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

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

9 SECTION 34. Subsection (d), Section 13.183, Water Code, is
10 amended to read as follows:

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

15 SECTION 35. Subsection (a), Section 13.184, Water Code, is
16 amended to read as follows:

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

1 may not prescribe any rate that will yield more than a fair return
2 on the invested capital used and useful in rendering service to the
3 public.

4 SECTION 36. Subsections (d) and (h), Section 13.185, Water
5 Code, are amended to read as follows:

6 (d) Net income is the total revenues of the utility less all
7 reasonable and necessary expenses as determined by the regulatory
8 authority. The regulatory authority shall:

9 (1) base a utility's expenses on historic test year
10 information adjusted for known and measurable changes, as
11 determined by utility commission rules; and

12 (2) determine expenses and revenues in a manner
13 consistent with Subsections (e) through (h) of this section.

14 (h) The regulatory authority may not include for ratemaking
15 purposes:

16 (1) legislative advocacy expenses, whether made
17 directly or indirectly, including legislative advocacy expenses
18 included in trade association dues;

19 (2) costs of processing a refund or credit under this
20 subchapter [~~Section 13.187 of this chapter~~]; or

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

25 SECTION 37. Section 13.187, Water Code, is amended to read
26 as follows:

27 Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO

1 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This
2 section applies only to a Class A utility.

3 (a-1) A utility may not make changes in its rates except by
4 sending by mail or e-mail ~~[delivering]~~ a statement of intent to each
5 ratepayer and to ~~[with]~~ the regulatory authority having original
6 jurisdiction at least 35 ~~[60]~~ days before the effective date of the
7 proposed change. The utility may send the statement of intent to a
8 ratepayer by e-mail only if the ratepayer has agreed to receive
9 communications electronically. The effective date of the new rates
10 must be the first day of a billing period, and the new rates may not
11 apply to service received before the effective date of the new
12 rates. The statement of intent must include:

13 (1) the information required by the regulatory
14 authority's rules;

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

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

18 (B) 30,000 gallons of water; ~~[and]~~

19 (3) a billing comparison regarding the existing sewer
20 rate and the new sewer rate computed for the use of 10,000 gallons,
21 unless the utility proposes a flat rate for sewer services; and

22 (4) a description of the process by which a ratepayer
23 may intervene in the ratemaking proceeding.

24 (b) The utility shall mail, send by e-mail, or deliver a [A]
25 copy of the statement of intent ~~[shall be mailed, sent by e-mail, or~~
26 ~~delivered]~~ to the Office of Public Utility Counsel, appropriate
27 offices of each affected municipality, and ~~[to]~~ any other affected

1 persons as required by the regulatory authority's rules.

2 (c) When the statement of intent is delivered, the utility
3 shall file with the regulatory authority an application to change
4 rates. The application must include information the regulatory
5 authority requires by rule and any appropriate cost and rate
6 schedules and written testimony supporting the requested rate
7 increase. If the utility fails to provide within a reasonable time
8 after the application is filed the necessary documentation or other
9 evidence that supports the costs and expenses that are shown in the
10 application, the regulatory authority may disallow the
11 nonsupported costs or expenses.

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

25 (d-1) After written notice to the utility, a local
26 regulatory authority may suspend the effective date of a rate
27 change for not more than 90 days from the proposed effective date[7

1 ~~except that the suspension shall be extended by two days for each~~
2 ~~day a hearing exceeds 15 days].~~ If the local regulatory authority
3 does not make a final determination on the proposed rate before the
4 expiration of the [~~applicable~~] suspension period, the proposed rate
5 shall be considered approved. This [The] approval is subject to the
6 authority of the local regulatory authority thereafter to continue
7 [authority's continuation of] a hearing in progress.

8 (e) After written notice to the utility, the utility
9 commission may suspend the effective date of a rate change for not
10 more than 150 days from the proposed effective date. If the utility
11 commission does not make a final determination on the proposed rate
12 before the expiration of the suspension period, the proposed rate
13 shall be considered approved. This approval is subject to the
14 authority of the utility commission thereafter to continue a
15 hearing in progress [If, before the 91st day after the effective
16 date of the rate change, the regulatory authority receives a
17 complaint from any affected municipality, or from the lesser of
18 1,000 or 10 percent of the ratepayers of the utility over whose
19 rates the regulatory authority has original jurisdiction, the
20 regulatory authority shall set the matter for hearing].

21 (e-1) The 150-day period described by Subsection (e) shall
22 be extended two days for each day a hearing exceeds 15 days.

23 (f) The regulatory authority shall, not later than the 30th
24 day after the effective date of the change, begin a hearing to
25 determine the propriety of the change [may set the matter for
26 hearing on its own motion at any time within 120 days after the
27 effective date of the rate change]. If the regulatory authority is

1 the utility commission, the utility commission may refer the matter
2 to the State Office of Administrative Hearings as provided by
3 utility commission rules [~~If more than half of the ratepayers of the~~
4 ~~utility receive service in a county with a population of more than~~
5 ~~3.3 million, the hearing must be held at a location in that county)].~~

6 (g) A local regulatory authority [~~The~~] hearing described by
7 this section may be informal.

8 (g-1) If the regulatory authority is the utility
9 commission, the utility commission shall give reasonable notice of
10 the hearing, including notice to the governing body of each
11 affected municipality and county. The utility is not required to
12 provide a formal answer or file any other formal pleading in
13 response to the notice, and the absence of an answer does not affect
14 an order for a hearing.

15 (h) If, after hearing, the regulatory authority finds the
16 rates currently being charged or those proposed to be charged are
17 unreasonable or in violation of law, the regulatory authority shall
18 determine the rates to be charged by the utility and shall fix the
19 rates by order served on the utility.

20 (i) A utility may put a changed rate into effect throughout
21 the area in which the utility sought to change its rates, including
22 an area over which the utility commission is exercising appellate
23 or original jurisdiction, by filing a bond with the utility
24 commission if the suspension period has been extended under
25 Subsection (e-1) and the utility commission fails to make a final
26 determination before the 151st day after the date the rate change
27 would otherwise be effective.

1 (j) The bonded rate may not exceed the proposed rate. The
2 bond must be payable to the utility commission in an amount, in a
3 form, and with a surety approved by the utility commission and
4 conditioned on refund [~~The regulatory authority, pending final~~
5 ~~action in a rate proceeding, may order the utility to deposit all or~~
6 ~~part of the rate increase received or to be received into an escrow~~
7 ~~account with a financial institution approved by the regulatory~~
8 ~~authority].~~

9 (k) Unless otherwise agreed to by the parties to the rate
10 proceeding, the utility shall refund or credit against future
11 bills:

12 (1) all sums collected under the bonded rates [~~during~~
13 ~~the pendency of the rate proceeding]~~ in excess of the rate finally
14 ordered; and

15 (2) [plus] interest on those sums at the current
16 interest rate as determined by the regulatory authority.

17 [~~(j) For good cause shown, the regulatory authority may~~
18 ~~authorize the release of funds to the utility from the escrow~~
19 ~~account during the pendency of the proceeding.~~

20 [~~(k) If the regulatory authority receives at least the~~
21 ~~number of complaints from ratepayers required for the regulatory~~
22 ~~authority to set a hearing under Subsection (e), the regulatory~~
23 ~~authority may, pending the hearing and a decision, suspend the date~~
24 ~~the rate 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 commission.]~~

2 (1) At any time during the pendency of the rate proceeding
3 the regulatory authority may fix interim rates to remain in effect
4 during the applicable suspension period under Subsection (d-1) or
5 Subsections (e) and (e-1) or until a final determination is made on
6 the proposed rate. If the regulatory authority does not establish
7 interim rates, the rates in effect when the application described
8 by Subsection (c) was filed continue in effect during the
9 suspension period.

10 (m) If the regulatory authority sets a final rate that is
11 higher than the interim rate, the utility shall be allowed to
12 collect the difference between the interim rate and final rate
13 unless otherwise agreed to by the parties to the rate proceeding.

14 (n) For good cause shown, the regulatory authority may at
15 any time during the proceeding require the utility to refund money
16 collected under a proposed rate before the rate was suspended or an
17 interim rate was established to the extent the proposed rate
18 exceeds the existing rate or the interim rate.

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

25 (p) Except to implement a rate adjustment provision
26 approved by the regulatory authority by rule or ordinance, as
27 applicable, or to adjust the rates of a newly acquired utility

1 system, a utility or two or more utilities under common control and
2 ownership may not file a statement of intent to increase its rates
3 more than once in a 12-month period, unless the regulatory
4 authority determines that a financial hardship exists. If the
5 regulatory authority requires the utility to deliver a corrected
6 statement of intent, the utility is not considered to be in
7 violation of the 12-month filing requirement.

8 SECTION 38. Subchapter F, Chapter 13, Water Code, is
9 amended by adding Sections 13.1871 and 13.1872 to read as follows:

10 Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO
11 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as
12 provided by Section 13.1872, this section applies only to a Class B
13 utility.

14 (b) A utility may not make changes in its rates except by
15 sending by mail or e-mail a statement of intent to each ratepayer
16 and to the regulatory authority having original jurisdiction at
17 least 35 days before the effective date of the proposed change. The
18 utility may send the statement of intent to a ratepayer by e-mail
19 only if the ratepayer has agreed to receive communications
20 electronically. The effective date of the new rates must be the
21 first day of a billing period, and the new rates may not apply to
22 service received before the effective date of the new rates. The
23 statement of intent must include:

24 (1) the information required by the regulatory
25 authority's rules;

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

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

2 (B) 30,000 gallons of water;

3 (3) a billing comparison regarding the existing sewer
4 rate and the new sewer rate computed for the use of 10,000 gallons,
5 unless the utility proposes a flat rate for sewer services; and

6 (4) a description of the process by which a ratepayer
7 may file a complaint under Subsection (i).

8 (c) The utility shall mail, send by e-mail, or deliver a
9 copy of the statement of intent to the appropriate offices of each
10 affected municipality and to any other affected persons as required
11 by the regulatory authority's rules.

12 (d) When the statement of intent is delivered, the utility
13 shall file with the regulatory authority an application to change
14 rates. The application must include information the regulatory
15 authority requires by rule and any appropriate cost and rate
16 schedules supporting the requested rate increase. In adopting
17 rules relating to the information required in the application, the
18 utility commission shall ensure that a utility can file a less
19 burdensome and complex application than is required of a Class A
20 utility. If the utility fails to provide within a reasonable time
21 after the application is filed the necessary documentation or other
22 evidence that supports the costs and expenses that are shown in the
23 application, the regulatory authority may disallow the
24 nonsupported costs or expenses.

25 (e) Except as provided by Subsection (f) or (g), if the
26 application or the statement of intent is not substantially
27 complete or does not comply with the regulatory authority's rules,

1 it may be rejected and the effective date of the rate change may be
2 suspended until a properly completed application is accepted by the
3 regulatory authority and a proper statement of intent is provided.
4 The utility commission may also suspend the effective date of any
5 rate change if the utility does not have a certificate of public
6 convenience and necessity or a completed application for a
7 certificate or to transfer a certificate pending before the utility
8 commission or if the utility is delinquent in paying the assessment
9 and any applicable penalties or interest required by Section
10 5.701(n).

11 (f) After written notice to the utility, a local regulatory
12 authority may suspend the effective date of a rate change for not
13 more than 90 days from the proposed effective date. If the local
14 regulatory authority does not make a final determination on the
15 proposed rate before the expiration of the suspension period, the
16 proposed rate shall be considered approved. This approval is
17 subject to the authority of the local regulatory authority
18 thereafter to continue a hearing in progress.

19 (g) After written notice to the utility, the utility
20 commission may suspend the effective date of a rate change for not
21 more than 205 days from the proposed effective date. If the utility
22 commission does not make a final determination on the proposed rate
23 before the expiration of the suspension period, the proposed rate
24 shall be considered approved. This approval is subject to the
25 authority of the utility commission thereafter to continue a
26 hearing in progress.

27 (h) The 205-day period described by Subsection (g) shall be

1 extended by two days for each day a hearing exceeds 15 days.

2 (i) If, before the 91st day after the effective date of the
3 rate change, the regulatory authority receives a complaint from any
4 affected municipality, or from the lesser of 1,000 or 10 percent of
5 the ratepayers of the utility over whose rates the regulatory
6 authority has original jurisdiction, the regulatory authority
7 shall set the matter for hearing.

8 (j) If the regulatory authority receives at least the number
9 of complaints from ratepayers required for the regulatory authority
10 to set a hearing under Subsection (i), the regulatory authority
11 may, pending the hearing and a decision, suspend the date the rate
12 change would otherwise be effective. Except as provided by
13 Subsection (h), the proposed rate may not be suspended for longer
14 than:

15 (1) 90 days by a local regulatory authority; or

16 (2) 205 days by the utility commission.

17 (k) The regulatory authority may set the matter for hearing
18 on its own motion at any time within 120 days after the effective
19 date of the rate change.

20 (l) The hearing may be informal.

21 (m) The regulatory authority shall give reasonable notice
22 of the hearing, including notice to the governing body of each
23 affected municipality and county. The utility is not required to
24 provide a formal answer or file any other formal pleading in
25 response to the notice, and the absence of an answer does not affect
26 an order for a hearing.

27 (n) The utility shall mail notice of the hearing to each

1 ratepayer before the hearing. The notice must include a
2 description of the process by which a ratepayer may intervene in the
3 ratemaking proceeding.

4 (o) If, after hearing, the regulatory authority finds the
5 rates currently being charged or those proposed to be charged are
6 unreasonable or in violation of law, the regulatory authority shall
7 determine the rates to be charged by the utility and shall fix the
8 rates by order served on the utility.

9 (p) A utility may put a changed rate into effect throughout
10 the area in which the utility sought to change its rates, including
11 an area over which the utility commission is exercising appellate
12 or original jurisdiction, by filing a bond with the utility
13 commission if the suspension period has been extended under
14 Subsection (h) and the utility commission fails to make a final
15 determination before the 206th day after the date the rate change
16 would otherwise be effective.

17 (q) The bonded rate may not exceed the proposed rate. The
18 bond must be payable to the utility commission in an amount, in a
19 form, and with a surety approved by the utility commission and
20 conditioned on refund.

21 (r) Unless otherwise agreed to by the parties to the rate
22 proceeding, the utility shall refund or credit against future
23 bills:

24 (1) all sums collected under the bonded rates in
25 excess of the rate finally ordered; and

26 (2) interest on those sums at the current interest
27 rate as determined by the regulatory authority.

1 (s) At any time during the pendency of the rate proceeding
2 the regulatory authority may fix interim rates to remain in effect
3 during the applicable suspension period under Subsection (f) or
4 Subsections (g) and (h) or until a final determination is made on
5 the proposed rate. If the regulatory authority does not establish
6 interim rates, the rates in effect when the application described
7 by Subsection (e) was filed continue in effect during the
8 suspension period.

9 (t) If the regulatory authority sets a final rate that is
10 higher than the interim rate, the utility shall be allowed to
11 collect the difference between the interim rate and final rate
12 unless otherwise agreed to by the parties to the rate proceeding.

13 (u) For good cause shown, the regulatory authority may at
14 any time during the proceeding require the utility to refund money
15 collected under a proposed rate before the rate was suspended or an
16 interim rate was established to the extent the proposed rate
17 exceeds the existing rate or the interim rate.

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

24 (w) Except to implement a rate adjustment provision
25 approved by the regulatory authority by rule or ordinance, as
26 applicable, or to adjust the rates of a newly acquired utility
27 system, a utility or two or more utilities under common control and

1 ownership may not file a statement of intent to increase its rates
2 more than once in a 12-month period, unless the regulatory
3 authority determines that a financial hardship exists. If the
4 regulatory authority requires the utility to deliver a corrected
5 statement of intent, the utility is not considered to be in
6 violation of the 12-month filing requirement.

7 Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT.

8 (a) This section applies only to a Class C utility.

9 (b) For purposes of this section, "price index" means an
10 appropriate price index designated annually by the utility
11 commission for the purposes of this section.

12 (c) A utility may not make changes in its rates except by:

13 (1) filing an application for a rate adjustment under
14 the procedures described by Subsection (e) and sending by mail, or
15 by e-mail if the ratepayer has agreed to receive communications
16 electronically, a notice to each ratepayer describing the proposed
17 rate adjustment at least 30 days before the effective date of the
18 proposed change; or

19 (2) complying with the procedures to change rates
20 described by Section 13.1871.

21 (d) The utility shall mail, send by e-mail, or deliver a
22 copy of the application to the appropriate offices of each affected
23 municipality and to any other affected persons as required by the
24 regulatory authority's rules.

25 (e) The utility commission by rule shall adopt procedures to
26 allow a utility to receive without a hearing an annual rate
27 adjustment based on changes in the price index. The rules must:

1 (1) include standard language to be included in the
2 notice described by Subsection (c)(1) describing the rate
3 adjustment process; and

4 (2) provide that an annual rate adjustment described
5 by this section may not result in a rate increase to any class or
6 category of ratepayer of more than the lesser of:

7 (A) five percent; or

8 (B) the percentage increase in the price index
9 between the year preceding the year in which the utility requests
10 the adjustment and the year in which the utility requests the
11 adjustment.

12 (f) A utility may adjust the utility's rates using the
13 procedures adopted under Subsection (e) not more than once each
14 year and not more than four times between rate proceedings
15 described by Section 13.1871.

16 SECTION 39. Section 13.188, Water Code, is amended to read
17 as follows:

18 Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a)
19 Notwithstanding any other provision in this chapter, the utility
20 commission by rule shall adopt a procedure allowing a utility to
21 file with the utility commission an application to timely adjust
22 the utility's rates to reflect an increase or decrease in
23 documented energy costs in a pass through clause. The utility
24 commission, by rule, shall require the pass through of documented
25 decreases in energy costs within a reasonable time. The pass
26 through, whether a decrease or increase, shall be implemented on no
27 later than an annual basis, unless the utility commission

1 determines a special circumstance applies.

2 (b) Notwithstanding any other provision to the contrary,
3 this adjustment is an uncontested matter not subject to a contested
4 case hearing. However, the utility commission [~~executive director~~]
5 shall hold an uncontested public meeting:

6 (1) on the request of a member of the legislature who
7 represents the area served by the water and sewer utility; or

8 (2) if the utility commission [~~executive director~~]
9 determines that there is substantial public interest in the matter.

10 (c) A proceeding under this section is not a rate case and
11 Sections [~~Section~~] 13.187, 13.1871, and 13.1872 do [~~does~~] not
12 apply.

13 SECTION 40. Subsections (a), (d), and (e), Section 13.241,
14 Water Code, are amended to read as follows:

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

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

25 (e) The utility commission by rule shall develop a
26 standardized method for determining under Section 13.246(f) which
27 of two or more retail public utilities or water supply or sewer

1 service corporations that apply for a certificate of public
2 convenience and necessity to provide water or sewer utility service
3 to an uncertificated area located in an economically distressed
4 area is more capable financially, managerially, and technically of
5 providing continuous and adequate service. In this subsection,
6 "economically distressed area" has the meaning assigned by Section
7 15.001.

8 SECTION 41. Subsections (a) and (c), Section 13.242, Water
9 Code, are amended to read as follows:

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

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

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

5 SECTION 42. Section 13.244, Water Code, is amended to read
6 as follows:

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

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

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

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

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

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

4 (B) the Texas State Plane Coordinate System;

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

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

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

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

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

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

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

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

22 (A) at least 50 acres; and

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

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

26 SECTION 43. Subsections (b), (c), (c-1), (c-2), (c-3), and
27 (e), Section 13.245, Water Code, are amended to read as follows:

1 (b) Except as provided by Subsections (c), (c-1), and (c-2),
2 the utility commission may not grant to a retail public utility a
3 certificate of public convenience and necessity for a service area
4 within the boundaries or extraterritorial jurisdiction of a
5 municipality without the consent of the municipality. The
6 municipality may not unreasonably withhold the consent. As a
7 condition of the consent, a municipality may require that all water
8 and sewer facilities be designed and constructed in accordance with
9 the municipality's standards for facilities.

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

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

19 (c-1) If a municipality has not consented under Subsection
20 (b) before the 180th day after the date a landowner or a retail
21 public utility submits to the municipality a formal request for
22 service according to the municipality's application requirements
23 and standards for facilities on the same or substantially similar
24 terms as provided by the retail public utility's application to the
25 utility commission, including a capital improvements plan required
26 by Section 13.244(d)(3) or a subdivision plat, the utility
27 commission may grant the certificate of public convenience and

1 necessity without the consent of the municipality if:

2 (1) the utility commission makes the findings required
3 by Subsection (c);

4 (2) the municipality has not entered into a binding
5 commitment to serve the area that is the subject of the retail
6 public utility's application to the utility commission before the
7 180th day after the date the formal request was made; and

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

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

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

14 (c-2) If a municipality refuses to provide service in the
15 proposed service area, as evidenced by a formal vote of the
16 municipality's governing body or an official notification from the
17 municipality, the utility commission is not required to make the
18 findings otherwise required by this section and may grant the
19 certificate of public convenience and necessity to the retail
20 public utility at any time after the date of the formal vote or
21 receipt of the official notification.

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

27 (e) If the utility commission makes a decision under

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

8 SECTION 44. Subsections (b) and (c), Section 13.2451, Water
9 Code, are amended to read as follows:

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

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

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

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

3 SECTION 45. Section 13.246, Water Code, is amended to read
4 as follows:

5 Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL;
6 FACTORS CONSIDERED. (a) If an application for a certificate of
7 public convenience and necessity or for an amendment to a
8 certificate is filed, the utility commission shall cause notice of
9 the application to be given to affected parties and to each county
10 and groundwater conservation district that is wholly or partly
11 included in the area proposed to be certified. If requested, the
12 utility commission shall fix a time and place for a hearing and give
13 notice of the hearing. Any person affected by the application may
14 intervene at the hearing.

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

1 (1) Section 13.248 or 13.255; or

2 (2) Chapter 65.

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

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

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

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

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

26 (4) the ability of the applicant to provide adequate
27 service, including meeting the standards of the commission, taking

1 into consideration the current and projected density and land use
2 of the area;

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

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

9 (7) environmental integrity;

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

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

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

19 (e) Where applicable, in addition to the other factors in
20 this section the utility commission shall consider the efforts of
21 the applicant:

22 (1) to extend service to any economically distressed
23 areas located within the service areas certificated to the
24 applicant; and

25 (2) to enforce the rules adopted under Section 16.343.

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 (g) In this section, "economically distressed area" has the
9 meaning assigned by Section 15.001.

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

1 rules by the water or sewer system of another person.

2 (i) A landowner is not entitled to make an election under
3 Subsection (h) but is entitled to contest the inclusion of the
4 landowner's property in the proposed service area at a hearing held
5 by the utility commission regarding the application if the proposed
6 service area is located within the boundaries or extraterritorial
7 jurisdiction of a municipality with a population of more than
8 500,000 and the municipality or a utility owned by the municipality
9 is the applicant.

10 SECTION 46. Subsection (a), Section 13.247, Water Code, is
11 amended to read as follows:

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

26 SECTION 47. Section 13.248, Water Code, is amended to read
27 as follows:

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

7 SECTION 48. Subsections (b), (c), and (e), Section 13.250,
8 Water Code, are amended to read as follows:

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

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

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

24 (3) nonuse; or

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

27 (c) Any discontinuance, reduction, or impairment of

1 service, whether with or without approval of the utility
2 commission, shall be in conformity with and subject to conditions,
3 restrictions, and limitations that the utility commission
4 prescribes.

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

8 SECTION 49. Subsection (d), Section 13.2502, Water Code, is
9 amended to read as follows:

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

12 SECTION 50. Section 13.251, Water Code, is amended to read
13 as follows:

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

24 SECTION 51. Section 13.252, Water Code, is amended to read
25 as follows:

26 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.
27 If a retail public utility in constructing or extending a line,

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

11 SECTION 52. Section 13.253, Water Code, is amended to read
12 as follows:

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

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

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

26 (B) develop, implement, and follow financial,
27 managerial, and technical practices that are acceptable to the

1 utility commission to ensure that continuous and adequate service
2 is provided to any areas currently certificated to the retail
3 public utility if the retail public utility has not provided
4 continuous and adequate service to any of those areas and, for a
5 utility, to provide financial assurance of the utility's ability to
6 operate the system in accordance with applicable laws and rules, in
7 the form of a bond or other financial assurance in a form and amount
8 specified by the utility commission;

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

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

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

21 (b) If the utility commission has reason to believe that
22 improvements and repairs to a water or sewer service system are
23 necessary to enable a retail public utility to provide continuous
24 and adequate service in any portion of its service area and the
25 retail public utility has provided financial assurance under
26 Section 341.0355, Health and Safety Code, or under this chapter,
27 the utility commission, after providing to the retail public

1 utility notice and an opportunity to be heard by the commissioners
2 at a [~~commission~~] meeting of the utility commission, may
3 immediately order specified improvements and repairs to the water
4 or sewer system, the costs of which may be paid by the bond or other
5 financial assurance in an amount determined by the utility
6 commission not to exceed the amount of the bond or financial
7 assurance. The order requiring the improvements may be an
8 emergency order if it is issued after the retail public utility has
9 had an opportunity to be heard [~~by the commissioners~~] at a
10 [~~commission~~] meeting of the utility commission. After notice and
11 hearing, the utility commission may require a retail public utility
12 to obligate additional money to replace the financial assurance
13 used for the improvements.

14 SECTION 53. Subsections (a), (a-1), (a-2), (a-3), (a-4),
15 (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Section
16 13.254, Water Code, are amended to read as follows:

17 (a) The utility commission at any time after notice and
18 hearing may revoke or amend any certificate of public convenience
19 and necessity with the written consent of the certificate holder or
20 if the utility commission [~~it~~] finds that:

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

25 (2) in an affected county as defined in Section
26 16.341, the cost of providing service by the certificate holder is
27 so prohibitively expensive as to constitute denial of service,

1 provided that, for commercial developments or for residential
2 developments started after September 1, 1997, in an affected county
3 as defined in Section 16.341, the fact that the cost of obtaining
4 service from the currently certificated retail public utility makes
5 the development economically unfeasible does not render such cost
6 prohibitively expensive in the absence of other relevant factors;

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

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

17 (a-1) As an alternative to decertification under Subsection
18 (a), the owner of a tract of land that is at least 50 acres and that
19 is not in a platted subdivision actually receiving water or sewer
20 service may petition the utility commission under this subsection
21 for expedited release of the area from a certificate of public
22 convenience and necessity so that the area may receive service from
23 another retail public utility. The fact that a certificate holder
24 is a borrower under a federal loan program is not a bar to a request
25 under this subsection for the release of the petitioner's land and
26 the receipt of services from an alternative provider. On the day
27 the petitioner submits the petition to the utility commission, the

1 petitioner shall send, via certified mail, a copy of the petition to
2 the certificate holder, who may submit information to the utility
3 commission to controvert information submitted by the petitioner.
4 The petitioner must demonstrate that:

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

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

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

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

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

16 (E) the flow and pressure requirements and
17 specific infrastructure needs, including line size and system
18 capacity for the required level of fire protection requested; and

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

22 (2) the certificate holder has been allowed at least
23 90 calendar days to review and respond to the written request and
24 the information it contains;

25 (3) the certificate holder:

26 (A) has refused to provide the service;

27 (B) is not capable of providing the service on a

1 continuous and adequate basis within the timeframe, at the level,
2 at the approximate cost that the alternative provider is capable of
3 providing for a comparable level of service, or in the manner
4 reasonably needed or requested by current and projected service
5 demands in the area; or

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

10 (4) the alternate retail public utility from which the
11 petitioner will be requesting service possesses the financial,
12 managerial, and technical capability to provide continuous and
13 adequate service within the timeframe, at the level, at the cost,
14 and in the manner reasonably needed or requested by current and
15 projected service demands in the area.

16 (a-2) A landowner is not entitled to make the election
17 described in Subsection (a-1) or (a-5) but is entitled to contest
18 under Subsection (a) the involuntary certification of its property
19 in a hearing held by the utility commission if the landowner's
20 property is located:

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

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

27 (a-3) Within 60 calendar days from the date the utility

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

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

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

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

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

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

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

25 (e) The determination of the monetary amount of
26 compensation, if any, shall be determined at the time another
27 retail public utility seeks to provide service in the previously

1 decertified area and before service is actually provided. The
2 utility commission shall ensure that the monetary amount of
3 compensation is determined not later than the 90th calendar day
4 after the date on which a retail public utility notifies the utility
5 commission of its intent to provide service to the decertified
6 area.

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

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

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

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

20 (h) A certificate holder that has land removed from its
21 certificated service area in accordance with this section may not
22 be required, after the land is removed, to provide service to the
23 removed land for any reason, including the violation of law or
24 utility commission or commission rules by a water or sewer system of
25 another person.

26 SECTION 54. Subsections (a), (b), (c), (d), (e), (g-1),
27 (k), (l), and (m), Section 13.255, Water Code, are amended to read

1 as follows:

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

22 (b) If an agreement is not executed within 180 days after
23 the municipality, in writing, notifies the retail public utility of
24 its intent to provide service to the incorporated or annexed area,
25 and if the municipality desires and intends to provide retail
26 utility service to the area, the municipality, prior to providing
27 service to the area, shall file an application with the utility

1 commission to grant single certification to the municipally owned
2 water or sewer utility or to a franchised utility. If an
3 application for single certification is filed, the utility
4 commission shall fix a time and place for a hearing and give notice
5 of the hearing to the municipality and franchised utility, if any,
6 and notice of the application and hearing to the retail public
7 utility.

8 (c) The utility commission shall grant single certification
9 to the municipality. The utility commission shall also determine
10 whether single certification as requested by the municipality would
11 result in property of a retail public utility being rendered
12 useless or valueless to the retail public utility, and shall
13 determine in its order the monetary amount that is adequate and just
14 to compensate the retail public utility for such property. If the
15 municipality in its application has requested the transfer of
16 specified property of the retail public utility to the municipality
17 or to a franchised utility, the utility commission shall also
18 determine in its order the adequate and just compensation to be paid
19 for such property pursuant to the provisions of this section,
20 including an award for damages to property remaining in the
21 ownership of the retail public utility after single certification.
22 The order of the utility commission shall not be effective to
23 transfer property. A transfer of property may only be obtained
24 under this section by a court judgment rendered pursuant to
25 Subsection (d) or (e) [~~of this section~~]. The grant of single
26 certification by the utility commission shall go into effect on the
27 date the municipality or franchised utility, as the case may be,

1 pays adequate and just compensation pursuant to court order, or
2 pays an amount into the registry of the court or to the retail
3 public utility under Subsection (f). If the court judgment
4 provides that the retail public utility is not entitled to any
5 compensation, the grant of single certification shall go into
6 effect when the court judgment becomes final. The municipality or
7 franchised utility must provide to each customer of the retail
8 public utility being acquired an individual written notice within
9 60 days after the effective date for the transfer specified in the
10 court judgment. The notice must clearly advise the customer of the
11 identity of the new service provider, the reason for the transfer,
12 the rates to be charged by the new service provider, and the
13 effective date of those rates.

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

19 (1) transfers to the municipally owned utility or
20 franchised utility title to property to be transferred to the
21 municipally owned utility or franchised utility as delineated by
22 the utility commission's final order and property determined by the
23 utility commission to be rendered useless or valueless by the
24 granting of single certification; and

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

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

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

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

19 (g-1) The utility commission shall adopt rules governing
20 the evaluation of the factors to be considered in determining the
21 monetary compensation under Subsection (g). The utility commission
22 by rule shall adopt procedures to ensure that the total
23 compensation to be paid to a retail public utility under Subsection
24 (g) is determined not later than the 90th calendar day after the
25 date on which the utility commission determines that the
26 municipality's application is administratively complete.

27 (k) The following conditions apply when a municipality or

1 franchised utility makes an application to acquire the service area
2 or facilities of a retail public utility described in Subsection
3 (j)(2):

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

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

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

15 (1) For an area incorporated by a municipality, the
16 compensation provided under Subsection (g) shall be determined by a
17 qualified individual or firm to serve as independent appraiser, who
18 shall be selected by the affected retail public utility, and the
19 costs of the appraiser shall be paid by the municipality. For an
20 area annexed by a municipality, the compensation provided under
21 Subsection (g) shall be determined by a qualified individual or
22 firm to which the municipality and the retail public utility agree
23 to serve as independent appraiser. If the retail public utility and
24 the municipality are unable to agree on a single individual or firm
25 to serve as the independent appraiser before the 11th day after the
26 date the retail public utility or municipality notifies the other
27 party of the impasse, the retail public utility and municipality

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

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

21 SECTION 55. Section 13.2551, Water Code, is amended to read
22 as follows:

23 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
24 condition to decertification or single certification under Section
25 13.254 or 13.255, and on request by an affected retail public
26 utility, the utility commission may order:

27 (1) the retail public utility seeking to provide

1 service to a decertified area to serve the entire service area of
2 the retail public utility that is being decertified; and

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

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

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

18 (1) transferring debt and other contract obligations;
19 (2) transferring real and personal property;
20 (3) establishing interim service rates for affected
21 customers during specified times; and

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

24 (d) The retail public utility seeking decertification shall
25 not charge the affected customers any transfer fee or other fee to
26 obtain service other than the retail public utility's usual and
27 customary rates for monthly service or the interim rates set by the

1 utility commission, if applicable.

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

5 SECTION 56. Subsections (e), (i), (r), and (s), Section
6 13.257, Water Code, are amended to read as follows:

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

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

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

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

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

14 (i) If the notice is given at closing as provided by
15 Subsection (g), a purchaser, or the purchaser's heirs, successors,
16 or assigns, may not maintain an action for damages or maintain an
17 action against a seller, title insurance company, real estate
18 broker, or lienholder, or any agent, representative, or person
19 acting on behalf of the seller, company, broker, or lienholder, by
20 reason of the seller's use of the information filed with the utility
21 commission by the utility service provider or the seller's use of
22 the map of the certificated service area of the utility service
23 provider filed in the real property records to determine whether
24 the property to be purchased is within the certificated service
25 area of the utility service provider. An action may not be
26 maintained against a title insurance company for the failure to
27 disclose that the described real property is included within the

1 certificated service area of a utility service provider if the
2 utility service provider did not file in the real property records
3 or with the utility commission the map of the certificated service
4 area.

5 (r) A utility service provider shall:

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

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

15 (B) the Texas State Plane Coordinate System;

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

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

20 (2) submit to the utility commission [~~executive~~
21 ~~director~~] evidence of the recording.

22 (s) Each county shall accept and file in its real property
23 records a utility service provider's map presented to the county
24 clerk under this section if the map meets filing requirements, does
25 not exceed 11 inches by 17 inches in size, and is accompanied by the
26 appropriate fee. The recording required by this section must be
27 completed not later than the 31st day after the date a utility

1 service provider receives a final order from the utility commission
2 granting an application for a new certificate or for an amendment to
3 a certificate that results in a change in the utility service
4 provider's service area.

5 SECTION 57. Subsections (a), (b), (c), (d), (e), (f), and
6 (g), Section 13.301, Water Code, are amended to read as follows:

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

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

16 (2) unless public notice is waived by the utility
17 commission [~~executive director~~] for good cause shown, give public
18 notice of the action.

19 (b) The utility commission may require that the person
20 purchasing or acquiring the water or sewer system demonstrate
21 adequate financial, managerial, and technical capability for
22 providing continuous and adequate service to the requested area and
23 any areas currently certificated to the person.

24 (c) If the person purchasing or acquiring the water or sewer
25 system cannot demonstrate adequate financial capability, the
26 utility commission may require that the person provide a bond or
27 other financial assurance in a form and amount specified by the

1 utility commission to ensure continuous and adequate utility
2 service is provided.

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

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

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

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

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

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

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

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

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

10 (f) Unless the utility commission holds [~~executive director~~
11 ~~requests that~~] a public hearing [~~be held~~], the sale, acquisition,
12 lease, or rental may be completed as proposed:

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

14 (2) at any time after the utility commission
15 [~~executive director~~] notifies the utility or water supply or sewer
16 service corporation that a hearing will not be held [~~requested~~].

17 (g) If the utility commission decides to hold a hearing [~~is~~
18 ~~requested~~] or if the utility or water supply or sewer service
19 corporation fails to make the application as required or to provide
20 public notice, the sale, acquisition, lease, or rental may not be
21 completed unless the utility commission determines that the
22 proposed transaction serves the public interest.

23 SECTION 58. Section 13.302, Water Code, is amended to read
24 as follows:

25 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC
26 UTILITY: REPORT. (a) A utility may not purchase voting stock in
27 another utility doing business in this state and a person may not

1 acquire a controlling interest in a utility doing business in this
2 state unless the person or utility files a written application with
3 the utility commission not later than the 61st day before the date
4 on which the transaction is to occur.

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

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

15 (d) The utility commission [~~executive director~~] may
16 [~~request that the commission~~] hold a public hearing on the
17 transaction if the utility commission [~~executive director~~]
18 believes that a criterion prescribed by Section 13.301(e) applies.

19 (e) Unless the utility commission holds [~~executive director~~
20 ~~requests that~~] a public hearing [~~be held~~], the purchase or
21 acquisition may be completed as proposed:

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

23 (2) at any time after the utility commission
24 [~~executive director~~] notifies the person or utility that a hearing
25 will not be held [~~requested~~].

26 (f) If the utility commission decides to hold a hearing [~~is~~
27 ~~requested~~] or if the person or utility fails to make the application

1 to the utility commission as required, the purchase or acquisition
2 may not be completed unless the utility commission determines that
3 the proposed transaction serves the public interest. A purchase or
4 acquisition that is not completed in accordance with the provisions
5 of this section is void.

6 SECTION 59. Section 13.303, Water Code, is amended to read
7 as follows:

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

14 SECTION 60. Section 13.304, Water Code, is amended to read
15 as follows:

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

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

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

8 SECTION 61. Section 13.341, Water Code, is amended to read
9 as follows:

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

18 SECTION 62. Section 13.342, Water Code, is amended to read
19 as follows:

20 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING
21 SECURITIES. The utility commission may require the disclosure of
22 the identity and respective interests of every owner of any
23 substantial interest in the voting securities of any utility or its
24 affiliated interest. One percent or more is a substantial interest
25 within the meaning of this section.

26 SECTION 63. Subsection (a), Section 13.343, Water Code, is
27 amended to read as follows:

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

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

7 (2) the utility commission [~~executive director~~]
8 determines that the utility cannot obtain wholesale water service
9 from another source at a lower cost than from the affiliate.

10 SECTION 64. Section 13.381, Water Code, is amended to read
11 as follows:

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

15 SECTION 65. Subsection (a), Section 13.382, Water Code, is
16 amended to read as follows:

17 (a) Any party represented by counsel who alleges that
18 existing rates are excessive or that rates prescribed by the
19 utility commission are excessive and who is a prevailing party in
20 proceedings for review of a utility commission order or decision
21 may in the same action recover against the regulation fund
22 reasonable fees for attorneys and expert witnesses and other costs
23 incurred by him before the utility commission and the court. The
24 amount of the attorney's fees shall be fixed by the court.

25 SECTION 66. Section 13.411, Water Code, is amended to read
26 as follows:

27 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)

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

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

- 21 (1) notify the utility's representative; and
22 (2) initiate enforcement action consistent with:
23 (A) this subchapter; and
24 (B) procedural rules adopted by the utility
25 commission or the commission.

26 SECTION 67. Section 13.4115, Water Code, is amended to read
27 as follows:

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

11 SECTION 68. Subsections (a), (f), and (g), Section 13.412,
12 Water Code, are amended to read as follows:

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

17 (1) has abandoned operation of its facilities;

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

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

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

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

27 (1) failure to pay a bill or obligation owed to a

1 retail public utility or to an electric or gas utility with the
2 result that the utility service provider has issued a notice of
3 discontinuance of necessary services;

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

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

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

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

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

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

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

25 SECTION 69. Section 13.413, Water Code, is amended to read
26 as follows:

27 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The

1 receiver may, subject to the approval of the court and after giving
2 notice to all interested parties, sell or otherwise dispose of all
3 or part of the real or personal property of a water or sewer utility
4 against which a proceeding has been brought under this subchapter
5 to pay the costs incurred in the operation of the receivership. The
6 costs include:

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

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

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

15 SECTION 70. Section 13.4131, Water Code, is amended to read
16 as follows:

17 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The
18 utility commission, after providing to the utility notice and an
19 opportunity for a hearing, may place a utility under supervision
20 for gross or continuing mismanagement, gross or continuing
21 noncompliance with this chapter or a rule adopted under this
22 chapter [~~commission rules~~], or noncompliance with an order issued
23 under this chapter [~~commission orders~~].

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

27 (1) management requirements;

1 (2) additional reporting requirements;

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

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

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

15 SECTION 71. Subsections (a), (b), and (d), Section 13.4132,
16 Water Code, are amended to read as follows:

17 (a) The utility commission or the commission, after
18 providing to the utility notice and an opportunity to be heard by
19 the commissioners at a utility commission or commission meeting,
20 may authorize a willing person to temporarily manage and operate a
21 utility if the utility:

22 (1) has discontinued or abandoned operations or the
23 provision of services; or

24 (2) has been or is being referred to the attorney
25 general for the appointment of a receiver under Section 13.412.

26 (b) The utility commission or the commission may appoint a
27 person under this section by emergency order, and notice of the

1 action is adequate if the notice is mailed or hand-delivered to the
2 last known address of the utility's headquarters.

3 (d) This section does not affect the authority of the
4 utility commission or the commission to pursue an enforcement claim
5 against a utility or an affiliated interest.

6 SECTION 72. Subsections (a) and (c), Section 13.4133, Water
7 Code, are amended to read as follows:

8 (a) Notwithstanding the requirements of Subchapter F
9 [~~Section 13.187 of this code~~], the utility commission may authorize
10 an emergency rate increase for a utility for which a person has been
11 appointed under Section 13.4132 [~~of this code~~] or for which a
12 receiver has been appointed under Section 13.412 [~~of this code~~] if
13 the increase is necessary to ensure the provision of continuous and
14 adequate services to the utility's customers.

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

23 SECTION 73. Subsections (a) and (c), Section 13.414, Water
24 Code, are amended to read as follows:

25 (a) Any retail public utility or affiliated interest that
26 violates this chapter, fails to perform a duty imposed on it, or
27 fails, neglects, or refuses to obey an order, rule, direction, or

1 requirement of the utility commission or the commission or decree
2 or judgment of a court is subject to a civil penalty of not less than
3 \$100 nor more than \$5,000 for each violation.

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

8 SECTION 74. Subsections (a), (b), (c), (d), (e), (f), (g),
9 (h), (i), (j), (k), and (m), Section 13.4151, Water Code, are
10 amended to read as follows:

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

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

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

23 (2) with respect to the alleged violator:

24 (A) the history and extent of previous
25 violations;

26 (B) the degree of culpability, including whether
27 the violation was attributable to mechanical or electrical failures

1 and whether the violation could have been reasonably anticipated
2 and avoided;

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

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

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

10 (3) any other matters that justice requires.

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

24 (d) Not later than the 10th day after the date on which the
25 report is issued, the utility commission or the executive director
26 of the commission shall give written notice of the report to the
27 person, affiliated interest, or retail public utility charged with

1 the violation. The notice shall include a brief summary of the
2 charges, a statement of the amount of the penalty recommended, and a
3 statement of the right of the person, affiliated interest, or
4 retail public utility charged to a hearing on the occurrence of the
5 violation, the amount of the penalty, or both.

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

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

23 (g) If the person, affiliated interest, or retail public
24 utility charged requests or the utility commission or the
25 commission orders a hearing, the appropriate agency [~~commission~~]
26 shall call a hearing and give notice of the hearing. As a result of
27 the hearing, the appropriate agency [~~commission~~] by order may find

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

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

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

27 (1) pay the penalty in full; or

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

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

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

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

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

25 (m) Notwithstanding any other provision of law, the utility
26 commission or the commission may compromise, modify, extend the
27 time for payment of, or remit, with or without condition, any

1 penalty imposed under this section.

2 SECTION 75. Section 13.417, Water Code, is amended to read
3 as follows:

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

11 SECTION 76. Section 13.418, Water Code, is amended to read
12 as follows:

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

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

23 SECTION 77. Subdivision (7), Section 13.501, Water Code, is
24 amended to read as follows:

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

1 more units.

2 SECTION 78. Subsection (e), Section 13.502, Water Code, is
3 amended to read as follows:

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

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

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

13 SECTION 79. Subsections (a), (b), and (e), Section 13.503,
14 Water Code, are amended to read as follows:

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

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

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

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

23 SECTION 80. Section 13.5031, Water Code, is amended to read
24 as follows:

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

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

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

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

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

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

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

1 hours; and

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

6 SECTION 81. Section 13.505, Water Code, is amended to read
7 as follows:

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

23 SECTION 82. Section 13.512, Water Code, is amended to read
24 as follows:

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

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

8 SECTION 83. Section 13.513, Water Code, is amended to read
9 as follows:

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

25 SECTION 84. Subsection (c), Section 49.352, Water Code, is
26 amended to read as follows:

27 (c) For purposes of this section, a municipality may obtain

1 single certification in the manner provided by Section 13.255,
2 except that the municipality may file an application with the
3 Public Utility Commission of Texas [~~commission~~] to grant single
4 certification immediately after the municipality provides notice
5 of intent to provide service as required by Section 13.255(b).

6 SECTION 85. Subsection (e), Section 552.047, Local
7 Government Code, is amended to read as follows:

8 (e) Users residing within the established service area, but
9 outside the municipality's boundaries, may appeal rates
10 established for drainage charges under [~~to the Texas Natural~~
11 ~~Resource Conservation Commission as authorized by~~] Section
12 13.043(b), [of the] Water Code.

13 SECTION 86. Subsection (b), Section 7201.004, Special
14 District Local Laws Code, is amended to read as follows:

15 (b) This section does not apply to:

16 (1) rules or regulations concerning potable water
17 quality standards; or

18 (2) conflicts relating to service areas or
19 certificates issued to the corporation or district by the Public
20 Utility Commission of Texas or the Texas Commission on
21 Environmental Quality.

22 SECTION 87. Subsection (c), Section 7201.005, Special
23 District Local Laws Code, is amended to read as follows:

24 (c) District boundaries may be modified in accordance with
25 Chapters 13 and 49, Water Code, except that the boundaries must
26 include all territory in any area included under a certificate of
27 convenience and necessity issued by the Public Utility Commission

1 of Texas or the Texas Commission on Environmental Quality to the
2 district.

3 SECTION 88. Section 7201.102, Special District Local Laws
4 Code, is amended to read as follows:

5 Sec. 7201.102. PROVISION OF SERVICE. The district shall at
6 all times operate and construct necessary improvements within the
7 certificated areas established by the Public Utility Commission of
8 Texas or the Texas Commission on Environmental Quality [~~commission~~]
9 to provide uninterrupted, continuous, and adequate service to
10 existing and future customers for water, sewer, and contract
11 services.

12 SECTION 89. Subsection (b), Section 8363.106, Special
13 District Local Laws Code, is amended to read as follows:

14 (b) In relation to a retail public utility that provides
15 water or sewer service to all or part of the area of the district
16 under a certificate of public convenience and necessity, the
17 district may exercise the powers given to a municipality provided
18 by Section 13.255, Water Code, as if the district were a
19 municipality that had annexed the area of the district. The Public
20 Utility Commission of Texas [~~commission~~] shall grant single
21 certification as to the city as provided by Section 13.255(c),
22 Water Code, in the event that the district applies for the
23 certification on the city's behalf in the manner provided by
24 Section 13.255(b), Water Code.

25 SECTION 90. Subsection (a), Section 8363.251, Special
26 District Local Laws Code, is amended to read as follows:

27 (a) The city may dissolve the district by ordinance after

1 provision is made for all debts incurred by the district if one or
2 more of the following does not occur:

3 (1) on or before the 90th day after the effective date
4 of the Act enacting this chapter, the city receives one or more
5 petitions requesting annexation of all territory in the district
6 remaining in the extraterritorial jurisdiction of the city;

7 (2) on or before the last day of the ninth month after
8 the effective date of the Act enacting this chapter, the city adopts
9 one or more ordinances annexing all territory in the district
10 remaining in the city's extraterritorial jurisdiction;

11 (3) on or before the last day of the third year after
12 the effective date of the Act enacting this chapter, the Public
13 Utility Commission of Texas [~~commission~~] issues an order approving
14 the sale and transfer of a certificate of public convenience and
15 necessity authorizing the city to provide retail water service to
16 territory in the district; or

17 (4) by the end of the fifth year after the effective
18 date of the Act enacting this chapter, the district has completed
19 construction of internal streets and water and sanitary sewer
20 facilities sufficient to serve at least 100 residential lots in the
21 district.

22 SECTION 91. Section 8801.201, Special District Local Laws
23 Code, is amended to read as follows:

24 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A
25 person who is required to convert to surface water under this
26 chapter and who purchases that water supply wholesale from a
27 political subdivision as defined by Section 12.013(b), Water Code,

1 may appeal to the Public Utility Commission of Texas [~~commission~~]
2 the rates the political subdivision charges to the person. Chapter
3 12, Water Code, and rules adopted under that chapter apply to an
4 appeal under this section.

5 (b) The Public Utility Commission of Texas [~~commission~~]
6 shall hear the appeal not later than the 180th day after the date
7 the appeal is filed.

8 (c) The Public Utility Commission of Texas [~~commission~~]
9 shall issue a final decision on the appeal not later than the 60th
10 day after the date the hearing ends.

11 SECTION 92. (a) On September 1, 2014, the following are
12 transferred from the Texas Commission on Environmental Quality to
13 the Public Utility Commission of Texas:

14 (1) the powers, duties, functions, programs, and
15 activities of the Texas Commission on Environmental Quality
16 relating to the economic regulation of water and sewer service,
17 including the issuance and transfer of certificates of convenience
18 and necessity, the determination of rates, and the administration
19 of hearings and proceedings involving those matters, under Sections
20 11.041 and 12.013 and Chapter 13, Water Code, as provided by this
21 Act;

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

26 (3) all property and records in the custody of the
27 Texas Commission on Environmental Quality that are related to a

1 power, duty, function, program, or activity transferred under this
2 Act and all funds appropriated by the legislature for that power,
3 duty, function, program, or activity.

4 (b) The Texas Commission on Environmental Quality shall
5 continue to carry out the commission's duties related to the
6 economic regulation of water and sewer service under the law as it
7 existed immediately before the effective date of this Act until
8 September 1, 2014, and the former law is continued in effect for
9 that purpose.

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

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

15 (2) establishes a plan for the identification and
16 transfer of the records, personnel, property, and unspent
17 appropriations of the Texas Commission on Environmental Quality
18 that are used for purposes of the commission's powers and duties
19 directly related to the economic regulation of water and sewer
20 service under Sections 11.041 and 12.013 and Chapter 13, Water
21 Code, as amended by this Act; and

22 (3) establishes a plan for the transfer of all pending
23 applications, hearings, rulemaking proceedings, and orders
24 relating to the economic regulation of water and sewer service
25 under Sections 11.041 and 12.013 and Chapter 13, Water Code, as
26 amended by this Act, from the Texas Commission on Environmental
27 Quality to the Public Utility Commission of Texas.

1 (d) The memorandum of understanding under this section:

2 (1) is not required to be adopted by rule under Section
3 5.104, Water Code; and

4 (2) must be completed by August 1, 2014.

5 (e) The executive directors of the Texas Commission on
6 Environmental Quality and the Public Utility Commission of Texas
7 may agree in the memorandum of understanding under this section to
8 transfer to the Public Utility Commission of Texas any personnel of
9 the Texas Commission on Environmental Quality whose functions
10 predominantly involve powers, duties, obligations, functions, and
11 activities related to the economic regulation of water and sewer
12 service under Sections 11.041 and 12.013 and Chapter 13, Water
13 Code, as amended by this Act.

14 (f) The Texas Commission on Environmental Quality and the
15 Public Utility Commission of Texas shall periodically update the
16 Office of Public Utility Counsel on the anticipated contents of the
17 memorandum of understanding under this section during the
18 development of the memorandum.

19 (g) On or after September 1, 2013, the Office of Public
20 Utility Counsel may initiate or intervene in a contested case
21 before the Texas Commission on Environmental Quality that the
22 office would be entitled to initiate or intervene in if the case
23 were before the Public Utility Commission of Texas, as authorized
24 by Chapter 13, Water Code, as amended by this Act.

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

1 consult with the Office of Public Utility Counsel to accomplish the
2 purposes of this section. The transition team shall establish
3 guidelines on how the two agencies will cooperate regarding:

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

12 (i) The transition team appointed under Subsection (h) of
13 this section shall provide monthly updates to the executive
14 directors of the Texas Commission on Environmental Quality and the
15 Public Utility Commission of Texas on the implementation of this
16 Act and provide a final report on the implementation to the
17 executive directors not later than September 1, 2014.

18 (j) A rule, form, policy, procedure, or decision of the
19 Texas Commission on Environmental Quality related to a power, duty,
20 function, program, or activity transferred under this Act continues
21 in effect as a rule, form, policy, procedure, or decision of the
22 Public Utility Commission of Texas and remains in effect until
23 amended or replaced by that agency. Notwithstanding any other law,
24 beginning September 1, 2013, the Public Utility Commission of Texas
25 may propose rules, forms, policies, and procedures related to a
26 function to be transferred to the Public Utility Commission of
27 Texas under this Act.

1 (k) The Public Utility Commission of Texas and the Texas
2 Commission on Environmental Quality shall adopt rules to implement
3 the changes in law made by this Act to Sections 11.041 and 12.013
4 and Chapter 13, Water Code, not later than September 1, 2015.

5 (1) An affiliate of a Class A utility, as those terms are
6 defined by Section 13.002, Water Code, as amended by this Act, may
7 not file an application for a rate change on or after the effective
8 date of this Act unless the affiliated Class A utility has filed for
9 a rate change on or after that date. In relation to the application
10 filed by the affiliate of the Class A utility, the Public Utility
11 Commission of Texas:

12 (1) may not approve the rate change application until
13 the Public Utility Commission of Texas approves the rate change
14 application filed by the affiliated Class A utility; and

15 (2) may require the affiliate to comply with the Class
16 A utility rate change process prescribed by Section 13.187, Water
17 Code, regardless of whether the affiliate is classified as a Class
18 A, B, or C utility under Section 13.002, Water Code, as amended by
19 this Act.

20 SECTION 93. This Act takes effect September 1, 2013.