

1-1 By: Watson, Nichols S.B. No. 567  
 1-2 (In the Senate - Filed February 14, 2013; February 20, 2013,  
 1-3 read first time and referred to Committee on Business and Commerce;  
 1-4 March 21, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 21, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 567 By: Watson

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to rates for water service, to the transfer of functions  
 1-22 relating to the economic regulation of water and sewer service from  
 1-23 the Texas Commission on Environmental Quality to the Public Utility  
 1-24 Commission of Texas, and to the duties of the Office of Public  
 1-25 Utility Counsel regarding the economic regulation of water and  
 1-26 sewer service.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Subsection (a), Section 5.013, Water Code, is  
 1-29 amended to read as follows:

1-30 (a) The commission has general jurisdiction over:

1-31 (1) water and water rights including the issuance of  
 1-32 water rights permits, water rights adjudication, cancellation of  
 1-33 water rights, and enforcement of water rights;

1-34 (2) continuing supervision over districts created  
 1-35 under Article III, Sections 52(b)(1) and (2), and Article XVI,  
 1-36 Section 59, of the Texas Constitution;

1-37 (3) the state's water quality program including  
 1-38 issuance of permits, enforcement of water quality rules, standards,  
 1-39 orders, and permits, and water quality planning;

1-40 (4) the determination of the feasibility of certain  
 1-41 federal projects;

1-42 (5) the adoption and enforcement of rules and  
 1-43 performance of other acts relating to the safe construction,  
 1-44 maintenance, and removal of dams;

1-45 (6) conduct of the state's hazardous spill prevention  
 1-46 and control program;

1-47 (7) the administration of the state's program relating  
 1-48 to inactive hazardous substance, pollutant, and contaminant  
 1-49 disposal facilities;

1-50 (8) the administration of a portion of the state's  
 1-51 injection well program;

1-52 (9) the administration of the state's programs  
 1-53 involving underground water and water wells and drilled and mined  
 1-54 shafts;

1-55 (10) the state's responsibilities relating to regional  
 1-56 waste disposal;

1-57 (11) the responsibilities assigned to the commission  
 1-58 by Chapters 361, 363, 382, and 401, Health and Safety Code; and

1-59 ~~(12) [administration of the state's water rate program  
 1-60 under Chapter 13 of this code, and~~

2-1            [~~13~~] any other areas assigned to the commission by  
2-2 this code and other laws of this state.

2-3            SECTION 2. Subsection (a), Section 5.311, Water Code, is  
2-4 amended to read as follows:

2-5            (a) The commission may delegate to an administrative law  
2-6 judge of the State Office of Administrative Hearings the  
2-7 responsibility to hear any matter before the commission [~~and to~~  
2-8 ~~issue interlocutory orders related to interim rates under Chapter~~  
2-9 ~~13~~].

2-10            SECTION 3. Section 5.507, Water Code, is amended to read as  
2-11 follows:

2-12            Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT  
2-13 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.  
2-14 The commission or the Public Utility Commission of Texas may issue  
2-15 an emergency order appointing a willing person to temporarily  
2-16 manage and operate a utility under Section 13.4132. Notice of the  
2-17 action is adequate if the notice is mailed or hand delivered to the  
2-18 last known address of the utility's headquarters.

2-19            SECTION 4. Subsections (a) and (c), Section 5.508, Water  
2-20 Code, are amended to read as follows:

2-21            (a) Notwithstanding the requirements of Subchapter F,  
2-22 Chapter 13 [~~Section 13.187~~], the Public Utility Commission of Texas  
2-23 [~~commission~~] may authorize an emergency rate increase for a utility  
2-24 for which a person has been appointed under Section 5.507 or 13.4132  
2-25 [~~13.412~~] or for which a receiver has been appointed under Section  
2-26 13.412 [~~13.4132~~] if the increase is necessary to ensure the  
2-27 provision of continuous and adequate services to the utility's  
2-28 customers. The Public Utility Commission of Texas shall consult  
2-29 with the commission as needed to carry out this section.

2-30            (c) Notwithstanding Section 5.505, an order may be issued  
2-31 under this section for a term not to exceed 15 months. The Public  
2-32 Utility Commission of Texas [~~commission~~] shall schedule a hearing  
2-33 to establish a final rate within 15 months after the date on which  
2-34 an emergency rate increase takes effect. The additional revenues  
2-35 collected under an emergency rate increase are subject to refund if  
2-36 the utility commission finds that the rate increase was larger than  
2-37 necessary to ensure continuous and adequate service.

2-38            SECTION 5. Section 11.002, Water Code, is amended by adding  
2-39 Subdivision (21) to read as follows:

2-40            (21) "Utility commission" means the Public Utility  
2-41 Commission of Texas.

2-42            SECTION 6. Subsection (f), Section 11.041, Water Code, is  
2-43 amended to read as follows:

2-44            (f) The commission shall hold a hearing on the complaint at  
2-45 the time and place stated in the order. It may hear evidence orally  
2-46 or by affidavit in support of or against the complaint, and it may  
2-47 hear arguments. The utility commission may participate in the  
2-48 hearing if necessary to present evidence on the price or rental  
2-49 demanded for the available water. On completion of the hearing, the  
2-50 commission shall render a written decision.

2-51            SECTION 7. Section 12.013, Water Code, is amended to read as  
2-52 follows:

2-53            Sec. 12.013. RATE-FIXING POWER. (a) The utility  
2-54 commission shall fix reasonable rates for the furnishing of raw or  
2-55 treated water for any purpose mentioned in Chapter 11 or 12 of this  
2-56 code.

2-57            (b) In this section, [~~The term~~] "political subdivision"  
2-58 [~~when used in this section~~] means incorporated cities, towns or  
2-59 villages, counties, river authorities, water districts, and other  
2-60 special purpose districts.

2-61            (c) The utility commission in reviewing and fixing  
2-62 reasonable rates for furnishing water under this section may use  
2-63 any reasonable basis for fixing rates as may be determined by the  
2-64 utility commission to be appropriate under the circumstances of the  
2-65 case being reviewed; provided, however, the utility commission may  
2-66 not fix a rate which a political subdivision may charge for  
2-67 furnishing water which is less than the amount required to meet the  
2-68 debt service and bond coverage requirements of that political  
2-69 subdivision's outstanding debt.

3-1 (d) The utility commission's jurisdiction under this  
 3-2 section relating to incorporated cities, towns, or villages shall  
 3-3 be limited to water furnished by such city, town, or village to  
 3-4 another political subdivision on a wholesale basis.

3-5 (e) The utility commission may establish interim rates and  
 3-6 compel continuing service during the pendency of any rate  
 3-7 proceeding.

3-8 (f) The utility commission may order a refund or assess  
 3-9 additional charges from the date a petition for rate review is  
 3-10 received by the utility commission of the difference between the  
 3-11 rate actually charged and the rate fixed by the utility commission,  
 3-12 plus interest at the statutory rate.

3-13 ~~[(g) No action or proceeding commenced prior to January 1,~~  
 3-14 ~~1977, before the Texas Water Rights Commission shall be affected by~~  
 3-15 ~~the enactment of this section.~~

3-16 ~~[(h) Nothing herein contained shall affect the jurisdiction~~  
 3-17 ~~of the Public Utility Commission.]~~

3-18 SECTION 8. Section 13.002, Water Code, is amended by  
 3-19 amending Subdivisions (2), (18), and (22) and adding Subdivisions  
 3-20 (4-a), (4-b), (4-c), and (22-a) to read as follows:

3-21 (2) "Affiliated interest" or "affiliate" means:

3-22 (A) any person or corporation owning or holding  
 3-23 directly or indirectly five percent or more of the voting  
 3-24 securities of a utility;

3-25 (B) any person or corporation in any chain of  
 3-26 successive ownership of five percent or more of the voting  
 3-27 securities of a utility;

3-28 (C) any corporation five percent or more of the  
 3-29 voting securities of which is owned or controlled directly or  
 3-30 indirectly by a utility;

3-31 (D) any corporation five percent or more of the  
 3-32 voting securities of which is owned or controlled directly or  
 3-33 indirectly by any person or corporation that owns or controls  
 3-34 directly or indirectly five percent or more of the voting  
 3-35 securities of any utility or by any person or corporation in any  
 3-36 chain of successive ownership of five percent of those utility  
 3-37 securities;

3-38 (E) any person who is an officer or director of a  
 3-39 utility or of any corporation in any chain of successive ownership  
 3-40 of five percent or more of voting securities of a public utility;

3-41 (F) any person or corporation that the utility  
 3-42 commission, after notice and hearing, determines actually  
 3-43 exercises any substantial influence or control over the policies  
 3-44 and actions of a utility or over which a utility exercises such  
 3-45 control or that is under common control with a utility, such control  
 3-46 being the possession directly or indirectly of the power to direct  
 3-47 or cause the direction of the management and policies of another,  
 3-48 whether that power is established through ownership or voting of  
 3-49 securities or by any other direct or indirect means; or

3-50 (G) any person or corporation that the utility  
 3-51 commission, after notice and hearing, determines is exercising  
 3-52 substantial influence over the policies and actions of the utility  
 3-53 in conjunction with one or more persons or corporations with which  
 3-54 they are related by ownership or blood relationship, or by action in  
 3-55 concert, that together they are affiliated within the meaning of  
 3-56 this section, even though no one of them alone is so affiliated.

3-57 (4-a) "Class A utility" means a public utility that  
 3-58 provides retail water or sewer utility service through 10,000 or  
 3-59 more taps or connections.

3-60 (4-b) "Class B utility" means a public utility that  
 3-61 provides retail water or sewer utility service through 500 or more  
 3-62 taps or connections but fewer than 10,000 taps or connections.

3-63 (4-c) "Class C utility" means a public utility that  
 3-64 provides retail water or sewer utility service through fewer than  
 3-65 500 taps or connections.

3-66 (18) "Regulatory authority" means, in accordance with  
 3-67 the context in which it is found, ~~[either]~~ the commission, the  
 3-68 utility commission, or the governing body of a municipality.

3-69 (22) "Test year" means the most recent 12-month

4-1 period, beginning on the first day of a calendar or fiscal year  
4-2 quarter, for which [~~representative~~] operating data for a retail  
4-3 public utility are available. [A utility rate filing must be based  
4-4 on a test year that ended less than 12 months before the date on  
4-5 which the utility made the rate filing.]

4-6 (22-a) "Utility commission" means the Public Utility  
4-7 Commission of Texas.

4-8 SECTION 9. Section 13.004, Water Code, is amended to read as  
4-9 follows:

4-10 Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER  
4-11 CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a)  
4-12 Notwithstanding any other law, the utility commission has the same  
4-13 jurisdiction over a water supply or sewer service corporation that  
4-14 the utility commission has under this chapter over a water and sewer  
4-15 utility if the utility commission finds that the water supply or  
4-16 sewer service corporation:

4-17 (1) is failing to conduct annual or special meetings  
4-18 in compliance with Section 67.007; or

4-19 (2) is operating in a manner that does not comply with  
4-20 the requirements for classifications as a nonprofit water supply or  
4-21 sewer service corporation prescribed by Sections 13.002(11) and  
4-22 (24).

4-23 (b) If the water supply or sewer service corporation  
4-24 voluntarily converts to a special utility district operating under  
4-25 Chapter 65, the utility commission's jurisdiction provided by this  
4-26 section ends.

4-27 SECTION 10. Section 13.011, Water Code, is amended to read  
4-28 as follows:

4-29 Sec. 13.011. EMPLOYEES. (a) The utility commission and  
4-30 the executive director of the commission, subject to approval, as  
4-31 applicable, by the utility commission or the commission, shall  
4-32 employ any engineering, accounting, and administrative personnel  
4-33 necessary to carry out each agency's powers and duties under this  
4-34 chapter.

4-35 (b) The executive director and the commission's staff are  
4-36 responsible for the gathering of information relating to all  
4-37 matters within the jurisdiction of the commission under this  
4-38 subchapter. The utility commission and the utility commission's  
4-39 staff are responsible for the gathering of information relating to  
4-40 all matters within the jurisdiction of the utility commission under  
4-41 this subchapter. The duties of the utility commission, the  
4-42 executive director, and the staff of the utility commission or  
4-43 commission, as appropriate, include:

4-44 (1) accumulation of evidence and other information  
4-45 from water and sewer utilities, [and] from the utility commission  
4-46 or commission, as appropriate, and the governing body of the  
4-47 respective agency, [~~commission and the board~~] and from other  
4-48 sources for the purposes specified by this chapter;

4-49 (2) preparation and presentation of evidence before  
4-50 the utility commission or commission, as appropriate, [~~commission~~]  
4-51 or its appointed examiner in proceedings;

4-52 (3) conducting investigations of water and sewer  
4-53 utilities under the jurisdiction of the utility commission or  
4-54 commission, as appropriate [~~commission~~];

4-55 (4) preparation of recommendations that the utility  
4-56 commission or commission, as appropriate, [~~commission~~] undertake  
4-57 an investigation of any matter within its jurisdiction;

4-58 (5) preparation of recommendations and a report for  
4-59 inclusion in the annual report of the utility commission or  
4-60 commission, as appropriate [~~commission~~];

4-61 (6) protection and representation of the public  
4-62 interest[~~, together with the public interest advocate,~~] before the  
4-63 utility commission or commission, as appropriate [~~commission~~]; and

4-64 (7) other activities that are reasonably necessary to  
4-65 enable the utility commission and the executive director and the  
4-66 staff of the utility commission or commission, as appropriate, to  
4-67 perform their duties.

4-68 SECTION 11. Section 13.014, Water Code, is amended to read  
4-69 as follows:

5-1           Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR  
 5-2 UTILITY COMMISSION. The attorney general shall represent the  
 5-3 commission or the utility commission under this chapter in all  
 5-4 matters before the state courts and any court of the United States.

5-5           SECTION 12. Subchapter B, Chapter 13, Water Code, is  
 5-6 amended by adding Section 13.017 to read as follows:

5-7           Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND  
 5-8 DUTIES. (a) In this section, "counsellor" and "office" have the  
 5-9 meanings assigned by Section 11.003, Utilities Code.

5-10           (b) The independent Office of Public Utility Counsel  
 5-11 represents the interests of residential and small commercial  
 5-12 consumers under this chapter. The office:

5-13           (1) shall assess the effect of utility rate changes  
 5-14 and other regulatory actions on residential consumers in this  
 5-15 state;

5-16           (2) shall advocate in the office's own name a position  
 5-17 determined by the counsellor to be most advantageous to a  
 5-18 substantial number of residential consumers;

5-19           (3) may appear or intervene, as a party or otherwise,  
 5-20 as a matter of right on behalf of:

5-21           (A) residential consumers, as a class, in any  
 5-22 proceeding before the utility commission, including an alternative  
 5-23 dispute resolution proceeding; and

5-24           (B) small commercial consumers, as a class, in  
 5-25 any proceeding in which the counsellor determines that small  
 5-26 commercial consumers are in need of representation, including an  
 5-27 alternative dispute resolution proceeding;

5-28           (4) may initiate or intervene as a matter of right or  
 5-29 otherwise appear in a judicial proceeding:

5-30           (A) that involves an action taken by an  
 5-31 administrative agency in a proceeding, including an alternative  
 5-32 dispute resolution proceeding, in which the counsellor is  
 5-33 authorized to appear; or

5-34           (B) in which the counsellor determines that  
 5-35 residential consumers or small commercial consumers are in need of  
 5-36 representation;

5-37           (5) is entitled to the same access as a party, other  
 5-38 than utility commission staff, to records gathered by the utility  
 5-39 commission under Section 13.133;

5-40           (6) is entitled to discovery of any nonprivileged  
 5-41 matter that is relevant to the subject matter of a proceeding or  
 5-42 petition before the utility commission;

5-43           (7) may represent an individual residential or small  
 5-44 commercial consumer with respect to the consumer's disputed  
 5-45 complaint concerning retail utility services that is unresolved  
 5-46 before the utility commission;

5-47           (8) may recommend legislation to the legislature that  
 5-48 the office determines would positively affect the interests of  
 5-49 residential and small commercial consumers; and

5-50           (9) may conduct consumer outreach and education  
 5-51 programs for residential and small commercial consumers.

5-52           (c) This section does not:

5-53           (1) affect a duty the office is required to perform  
 5-54 under other law; or

5-55           (2) limit the authority of the utility commission to  
 5-56 represent residential or small commercial consumers.

5-57           (d) The appearance of the counsellor in a proceeding does  
 5-58 not preclude the appearance of other parties on behalf of  
 5-59 residential or small commercial consumers. The counsellor may not  
 5-60 be grouped with any other party.

5-61           SECTION 13. Section 13.041, Water Code, is amended to read  
 5-62 as follows:

5-63           Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND  
 5-64 COMMISSION [POWER]; RULES; HEARINGS. (a) The utility commission  
 5-65 may regulate and supervise the business of each [every] water and  
 5-66 sewer utility within its jurisdiction, including ratemaking and  
 5-67 other economic regulation. The commission may regulate water and  
 5-68 sewer utilities within its jurisdiction to ensure safe drinking  
 5-69 water and environmental protection. The utility commission and the

6-1 commission [and] may do all things, whether specifically designated  
 6-2 in this chapter or implied in this chapter, necessary and  
 6-3 convenient to the exercise of these powers [this power] and  
 6-4 jurisdiction. The utility commission may consult with the  
 6-5 commission as necessary in carrying out its duties related to the  
 6-6 regulation of water and sewer utilities.

6-7 (b) The commission and the utility commission shall adopt  
 6-8 and enforce rules reasonably required in the exercise of [its]  
 6-9 powers and jurisdiction of each agency, including rules governing  
 6-10 practice and procedure before the commission and the utility  
 6-11 commission.

6-12 (c) The commission and the utility commission may call and  
 6-13 hold hearings, administer oaths, receive evidence at hearings,  
 6-14 issue subpoenas to compel the attendance of witnesses and the  
 6-15 production of papers and documents, and make findings of fact and  
 6-16 decisions with respect to administering this chapter or the rules,  
 6-17 orders, or other actions of the commission or the utility  
 6-18 commission.

6-19 (c-1) In addition to the powers and duties of the State  
 6-20 Office of Administrative Hearings under Title 2, Utilities Code,  
 6-21 the utility commission may delegate to an administrative law judge  
 6-22 of the State Office of Administrative Hearings the responsibility  
 6-23 and authority to issue interlocutory orders related to interim  
 6-24 rates under this chapter.

6-25 (d) The utility commission may issue emergency orders, with  
 6-26 or without a hearing:

6-27 (1) to compel a water or sewer service provider that  
 6-28 has obtained or is required to obtain a certificate of public  
 6-29 convenience and necessity to provide continuous and adequate water  
 6-30 service, sewer service, or both, if the discontinuance of the  
 6-31 service is imminent or has occurred because of the service  
 6-32 provider's actions or failure to act; and

6-33 (2) to compel a retail public utility to provide an  
 6-34 emergency interconnection with a neighboring retail public utility  
 6-35 for the provision of temporary water or sewer service, or both, for  
 6-36 not more than 90 days if service discontinuance or serious  
 6-37 impairment in service is imminent or has occurred.

6-38 (e) The utility commission may establish reasonable  
 6-39 compensation for the temporary service required under Subsection  
 6-40 (d)(2) [of this section] and may allow the retail public utility  
 6-41 receiving the service to make a temporary adjustment to its rate  
 6-42 structure to ensure proper payment.

6-43 (f) If an order is issued under Subsection (d) without a  
 6-44 hearing, the order shall fix a time, as soon after the emergency  
 6-45 order is issued as is practicable, and place for a hearing to be  
 6-46 held before the utility commission.

6-47 (g) The regulatory assessment required by Section 5.701(n)  
 6-48 [5.235(n) of this code] is not a rate and is not reviewable by the  
 6-49 utility commission under Section 13.043 [of this code]. The  
 6-50 commission has the authority to enforce payment and collection of  
 6-51 the regulatory assessment.

6-52 SECTION 14. Section 13.042, Water Code, is amended to read  
 6-53 as follows:

6-54 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND  
 6-55 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the  
 6-56 limitations imposed in this chapter and for the purpose of  
 6-57 regulating rates and services so that those rates may be fair, just,  
 6-58 and reasonable and the services adequate and efficient, the  
 6-59 governing body of each municipality has exclusive original  
 6-60 jurisdiction over all water and sewer utility rates, operations,  
 6-61 and services provided by a water and sewer utility within its  
 6-62 corporate limits.

6-63 (b) The governing body of a municipality by ordinance may  
 6-64 elect to have the utility commission exercise exclusive original  
 6-65 jurisdiction over the utility rates, operation, and services of  
 6-66 utilities, within the incorporated limits of the municipality.

6-67 (c) The governing body of a municipality that surrenders its  
 6-68 jurisdiction to the utility commission may reinstate its  
 6-69 jurisdiction by ordinance at any time after the second anniversary

7-1 of the date on which the municipality surrendered its jurisdiction  
 7-2 to the utility commission, except that the municipality may not  
 7-3 reinstate its jurisdiction during the pendency of a rate proceeding  
 7-4 before the utility commission. The municipality may not surrender  
 7-5 its jurisdiction again until the second anniversary of the date on  
 7-6 which the municipality reinstates jurisdiction.

7-7 (d) The utility commission shall have exclusive appellate  
 7-8 jurisdiction to review orders or ordinances of those municipalities  
 7-9 as provided in this chapter.

7-10 (e) The utility commission shall have exclusive original  
 7-11 jurisdiction over water and sewer utility rates, operations, and  
 7-12 services not within the incorporated limits of a municipality  
 7-13 exercising exclusive original jurisdiction over those rates,  
 7-14 operations, and services as provided in this chapter.

7-15 (f) This subchapter does not give the utility commission  
 7-16 power or jurisdiction to regulate or supervise the rates or service  
 7-17 of a utility owned and operated by a municipality, directly or  
 7-18 through a municipally owned corporation, within its corporate  
 7-19 limits or to affect or limit the power, jurisdiction, or duties of a  
 7-20 municipality that regulates land and supervises water and sewer  
 7-21 utilities within its corporate limits, except as provided by this  
 7-22 code.

7-23 SECTION 15. Subsections (a), (b), (c), (e), (f), (g), (h),  
 7-24 and (j), Section 13.043, Water Code, are amended to read as follows:

7-25 (a) Any party to a rate proceeding before the governing body  
 7-26 of a municipality may appeal the decision of the governing body to  
 7-27 the utility commission. This subsection does not apply to a  
 7-28 municipally owned utility. An appeal under this subsection must be  
 7-29 initiated within 90 days after the date of notice of the final  
 7-30 decision by the governing body, or within 30 days if the appeal  
 7-31 relates to the rates of a Class A utility, by filing a petition for  
 7-32 review with the utility commission and by serving copies on all  
 7-33 parties to the original rate proceeding. The utility commission  
 7-34 shall hear the appeal de novo and shall fix in its final order the  
 7-35 rates the governing body should have fixed in the action from which  
 7-36 the appeal was taken and may include reasonable expenses incurred  
 7-37 in the appeal proceedings. The utility commission may establish  
 7-38 the effective date for the utility commission's rates at the  
 7-39 original effective date as proposed by the utility provider and may  
 7-40 order refunds or allow a surcharge to recover lost revenues. The  
 7-41 utility commission may consider only the information that was  
 7-42 available to the governing body at the time the governing body made  
 7-43 its decision and evidence of reasonable expenses incurred in the  
 7-44 appeal proceedings.

7-45 (b) Ratepayers of the following entities may appeal the  
 7-46 decision of the governing body of the entity affecting their water,  
 7-47 drainage, or sewer rates to the utility commission:

7-48 (1) a nonprofit water supply or sewer service  
 7-49 corporation created and operating under Chapter 67;

7-50 (2) a utility under the jurisdiction of a municipality  
 7-51 inside the corporate limits of the municipality;

7-52 (3) a municipally owned utility, if the ratepayers  
 7-53 reside outside the corporate limits of the municipality;

7-54 (4) a district or authority created under Article III,  
 7-55 Section 52, or Article XVI, Section 59, of the Texas Constitution  
 7-56 that provides water or sewer service to household users; and

7-57 (5) a utility owned by an affected county, if the  
 7-58 ratepayer's rates are actually or may be adversely affected. For  
 7-59 the purposes of this section ratepayers who reside outside the  
 7-60 boundaries of the district or authority shall be considered a  
 7-61 separate class from ratepayers who reside inside those boundaries.

7-62 (c) An appeal under Subsection (b) [~~of this section~~] must be  
 7-63 initiated by filing a petition for review with the utility  
 7-64 commission and the entity providing service within 90 days after  
 7-65 the effective day of the rate change or, if appealing under  
 7-66 Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after  
 7-67 the date on which the governing body of the municipality or affected  
 7-68 county makes a final decision. The petition must be signed by the  
 7-69 lesser of 10,000 or 10 percent of those ratepayers whose rates have

8-1 been changed and who are eligible to appeal under Subsection (b) [~~of~~  
8-2 ~~this section~~].

8-3 (e) In an appeal under Subsection (b) [~~of this section~~], the  
8-4 utility commission shall hear the appeal de novo and shall fix in  
8-5 its final order the rates the governing body should have fixed in  
8-6 the action from which the appeal was taken. The utility commission  
8-7 may establish the effective date for the utility commission's rates  
8-8 at the original effective date as proposed by the service provider,  
8-9 may order refunds or allow a surcharge to recover lost revenues, and  
8-10 may allow recovery of reasonable expenses incurred by the retail  
8-11 public utility in the appeal proceedings. The utility commission  
8-12 may consider only the information that was available to the  
8-13 governing body at the time the governing body made its decision and  
8-14 evidence of reasonable expenses incurred by the retail public  
8-15 utility in the appeal proceedings. The rates established by the  
8-16 utility commission in an appeal under Subsection (b) [~~of this~~  
8-17 ~~section~~] remain in effect until the first anniversary of the  
8-18 effective date proposed by the retail public utility for the rates  
8-19 being appealed or until changed by the service provider, whichever  
8-20 date is later, unless the utility commission determines that a  
8-21 financial hardship exists.

8-22 (f) A retail public utility that receives water or sewer  
8-23 service from another retail public utility or political subdivision  
8-24 of the state, including an affected county, may appeal to the  
8-25 utility commission a decision of the provider of water or sewer  
8-26 service affecting the amount paid for water or sewer service. An  
8-27 appeal under this subsection must be initiated within 90 days after  
8-28 the date of notice of the decision is received from the provider of  
8-29 water or sewer service by the filing of a petition by the retail  
8-30 public utility.

8-31 (g) An applicant for service from an affected county or a  
8-32 water supply or sewer service corporation may appeal to the utility  
8-33 commission a decision of the county or water supply or sewer service  
8-34 corporation affecting the amount to be paid to obtain service other  
8-35 than the regular membership or tap fees. In addition to the factors  
8-36 specified under Subsection (j), in an appeal brought under this  
8-37 subsection the utility commission shall determine whether the  
8-38 amount paid by the applicant is consistent with the tariff of the  
8-39 water supply or sewer service corporation and is reasonably related  
8-40 to the cost of installing on-site and off-site facilities to  
8-41 provide service to that applicant. If the utility commission finds  
8-42 the amount charged to be clearly unreasonable, it shall establish  
8-43 the fee to be paid for that applicant. An appeal under this  
8-44 subsection must be initiated within 90 days after the date written  
8-45 notice is provided to the applicant or member of the decision of an  
8-46 affected county or water supply or sewer service corporation  
8-47 relating to the applicant's initial request for that service. A  
8-48 determination made by the utility commission on an appeal under  
8-49 this subsection is binding on all similarly situated applicants for  
8-50 service, and the utility commission may not consider other appeals  
8-51 on the same issue until the applicable provisions of the tariff of  
8-52 the water supply or sewer service corporation are amended.

8-53 (h) The utility commission may, on a motion by the utility  
8-54 commission [~~executive director~~] or by the appellant under  
8-55 Subsection (a), (b), or (f) [~~of this section~~], establish interim  
8-56 rates to be in effect until a final decision is made.

8-57 (j) In an appeal under this section, the utility commission  
8-58 shall ensure that every rate made, demanded, or received by any  
8-59 retail public utility or by any two or more retail public utilities  
8-60 jointly shall be just and reasonable. Rates shall not be  
8-61 unreasonably preferential, prejudicial, or discriminatory but  
8-62 shall be sufficient, equitable, and consistent in application to  
8-63 each class of customers. The utility commission shall use a  
8-64 methodology that preserves the financial integrity of the retail  
8-65 public utility. For agreements between municipalities the utility  
8-66 commission shall consider the terms of any wholesale water or sewer  
8-67 service agreement in an appellate rate proceeding.

8-68 SECTION 16. Subsection (b), Section 13.044, Water Code, is  
8-69 amended to read as follows:



9-1 (b) Notwithstanding the provisions of any resolution,  
 9-2 ordinance, or agreement, a district may appeal the rates imposed by  
 9-3 the municipality by filing a petition with the utility commission.  
 9-4 The utility commission shall hear the appeal de novo and the  
 9-5 municipality shall have the burden of proof to establish that the  
 9-6 rates are just and reasonable. The utility commission shall fix the  
 9-7 rates to be charged by the municipality and the municipality may not  
 9-8 increase such rates without the approval of the utility commission.

9-9 SECTION 17. Section 13.046, Water Code, is amended to read  
 9-10 as follows:

9-11 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR  
 9-12 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The  
 9-13 utility commission by rule shall establish a procedure that allows  
 9-14 a retail public utility that takes over the provision of services  
 9-15 for a nonfunctioning retail water or sewer utility service provider  
 9-16 to charge a reasonable rate for the services provided to the  
 9-17 customers of the nonfunctioning system and to bill the customers  
 9-18 for the services at that rate immediately to recover service costs.

9-19 (b) The rules must provide a streamlined process that the  
 9-20 retail public utility that takes over the nonfunctioning system may  
 9-21 use to apply to the utility commission for a ruling on the  
 9-22 reasonableness of the rates the utility is charging under  
 9-23 Subsection (a). The process must allow for adequate consideration  
 9-24 of costs for interconnection or other costs incurred in making  
 9-25 services available and of the costs that may necessarily be  
 9-26 incurred to bring the nonfunctioning system into compliance with  
 9-27 utility commission and commission rules.

9-28 (c) The utility commission shall provide a reasonable  
 9-29 period for the retail public utility that takes over the  
 9-30 nonfunctioning system to bring the nonfunctioning system into  
 9-31 compliance with utility commission and commission rules during  
 9-32 which the utility commission or the commission may not impose a  
 9-33 penalty for any deficiency in the system that is present at the time  
 9-34 the utility takes over the nonfunctioning system. The utility  
 9-35 commission must consult with the utility before determining the  
 9-36 period and may grant an extension of the period for good cause.

9-37 SECTION 18. Section 13.081, Water Code, is amended to read  
 9-38 as follows:

9-39 Sec. 13.081. FRANCHISES. This chapter may not be construed  
 9-40 as in any way limiting the rights and powers of a municipality to  
 9-41 grant or refuse franchises to use the streets and alleys within its  
 9-42 limits and to make the statutory charges for their use, but no  
 9-43 provision of any franchise agreement may limit or interfere with  
 9-44 any power conferred on the utility commission by this chapter. If a  
 9-45 municipality performs regulatory functions under this chapter, it  
 9-46 may make such other charges as may be provided in the applicable  
 9-47 franchise agreement, together with any other charges permitted by  
 9-48 this chapter.

9-49 SECTION 19. Section 13.082, Water Code, is amended to read  
 9-50 as follows:

9-51 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT  
 9-52 AREAS. (a) Notwithstanding any other provision of this section,  
 9-53 municipalities shall continue to regulate each kind of local  
 9-54 utility service inside their boundaries until the utility  
 9-55 commission has assumed jurisdiction over the respective utility  
 9-56 pursuant to this chapter.

9-57 (b) If a municipality does not surrender its jurisdiction,  
 9-58 local utility service within the boundaries of the municipality  
 9-59 shall be exempt from regulation by the utility commission under  
 9-60 this chapter to the extent that this chapter applies to local  
 9-61 service, and the municipality shall have, regarding service within  
 9-62 its boundaries, the right to exercise the same regulatory powers  
 9-63 under the same standards and rules as the utility commission or  
 9-64 other standards and rules not inconsistent with them. The utility  
 9-65 commission's rules relating to service and response to requests for  
 9-66 service for utilities operating within a municipality's corporate  
 9-67 limits apply unless the municipality adopts its own rules.

9-68 (c) Notwithstanding any election, the utility commission  
 9-69 may consider water and sewer utilities' revenues and return on

10-1 investment in exempt areas in fixing rates and charges in nonexempt  
 10-2 areas and may also exercise the powers conferred necessary to give  
 10-3 effect to orders under this chapter for the benefit of nonexempt  
 10-4 areas. Likewise, in fixing rates and charges in the exempt area,  
 10-5 the governing body may consider water and sewer utilities' revenues  
 10-6 and return on investment in nonexempt areas.

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

10-11 (e) This section does not limit the duty and power of the  
 10-12 utility commission to regulate service and rates of municipally  
 10-13 regulated water and sewer utilities for service provided to other  
 10-14 areas in Texas.

10-15 SECTION 20. Section 13.085, Water Code, is amended to read  
 10-16 as follows:

10-17 Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,  
 10-18 the utility commission may advise and assist municipalities and  
 10-19 affected counties in connection with questions and proceedings  
 10-20 arising under this chapter. This assistance may include aid to  
 10-21 municipalities or an affected county in connection with matters  
 10-22 pending before the utility commission, the courts, the governing  
 10-23 body of any municipality, or the commissioners court of an affected  
 10-24 county, including making members of the staff available to them as  
 10-25 witnesses and otherwise providing evidence.

10-26 SECTION 21. Subsection (c), Section 13.087, Water Code, is  
 10-27 amended to read as follows:

10-28 (c) Notwithstanding any other provision of this chapter,  
 10-29 the utility commission has jurisdiction to enforce this section.

10-30 SECTION 22. Subsections (a), (b), (c), and (e), Section  
 10-31 13.131, Water Code, are amended to read as follows:

10-32 (a) Every water and sewer utility shall keep and render to  
 10-33 the regulatory authority in the manner and form prescribed by the  
 10-34 utility commission uniform accounts of all business transacted.  
 10-35 The utility commission may also prescribe forms of books, accounts,  
 10-36 records, and memoranda to be kept by those utilities, including the  
 10-37 books, accounts, records, and memoranda of the rendition of and  
 10-38 capacity for service as well as the receipts and expenditures of  
 10-39 money, and any other forms, records, and memoranda that in the  
 10-40 judgment of the utility commission may be necessary to carry out  
 10-41 this chapter.

10-42 (b) In the case of a utility subject to regulation by a  
 10-43 federal regulatory agency, compliance with the system of accounts  
 10-44 prescribed for the particular class of utilities by that agency may  
 10-45 be considered a sufficient compliance with the system prescribed by  
 10-46 the utility commission. However, the utility commission may  
 10-47 prescribe forms of books, accounts, records, and memoranda covering  
 10-48 information in addition to that required by the federal agency. The  
 10-49 system of accounts and the forms of books, accounts, records, and  
 10-50 memoranda prescribed by the utility commission for a utility or  
 10-51 class of utilities may not conflict or be inconsistent with the  
 10-52 systems and forms established by a federal agency for that utility  
 10-53 or class of utilities.

10-54 (c) The utility commission shall fix proper and adequate  
 10-55 rates and methods of depreciation, amortization, or depletion of  
 10-56 the several classes of property of each utility and shall require  
 10-57 every utility to carry a proper and adequate depreciation account  
 10-58 in accordance with those rates and methods and with any other rules  
 10-59 the utility commission prescribes. Rules adopted under this  
 10-60 subsection must require the book cost less net salvage of  
 10-61 depreciable utility plant retired to be charged in its entirety to  
 10-62 the accumulated depreciation account in a manner consistent with  
 10-63 accounting treatment of regulated electric and gas utilities in  
 10-64 this state. Those rates, methods, and accounts shall be utilized  
 10-65 uniformly and consistently throughout the rate-setting and appeal  
 10-66 proceedings.

10-67 (e) Every utility is required to keep and render its books,  
 10-68 accounts, records, and memoranda accurately and faithfully in the  
 10-69 manner and form prescribed by the utility commission and to comply

11-1 with all directions of the regulatory authority relating to those  
 11-2 books, accounts, records, and memoranda. The regulatory authority  
 11-3 may require the examination and audit of all accounts.

11-4 SECTION 23. Section 13.132, Water Code, is amended to read  
 11-5 as follows:

11-6 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The  
 11-7 utility commission may:

11-8 (1) require that water and sewer utilities report to  
 11-9 it any information relating to themselves and affiliated interests  
 11-10 both inside and outside this state that it considers useful in the  
 11-11 administration of this chapter, including any information relating  
 11-12 to a transaction between the utility and an affiliated interest  
 11-13 inside or outside this state, to the extent that the transaction is  
 11-14 subject to the utility commission's jurisdiction;

11-15 (2) establish forms for all reports;

11-16 (3) determine the time for reports and the frequency  
 11-17 with which any reports are to be made;

11-18 (4) require that any reports be made under oath;

11-19 (5) require that a copy of any contract or arrangement  
 11-20 between any utility and any affiliated interest be filed with it and  
 11-21 require that such a contract or arrangement that is not in writing  
 11-22 be reduced to writing;

11-23 (6) require that a copy of any report filed with any  
 11-24 federal agency or any governmental agency or body of any other state  
 11-25 be filed with it; and

11-26 (7) require that a copy of annual reports showing all  
 11-27 payments of compensation, other than salary or wages subject to the  
 11-28 withholding of federal income tax, made to residents of Texas, or  
 11-29 with respect to legal, administrative, or legislative matters in  
 11-30 Texas, or for representation before the Texas Legislature or any  
 11-31 governmental agency or body be filed with it.

11-32 (b) On the request of the governing body of any  
 11-33 municipality, the utility commission may provide sufficient staff  
 11-34 members to advise and consult with the municipality on any pending  
 11-35 matter.

11-36 SECTION 24. Section 13.1325, Water Code, is amended to read  
 11-37 as follows:

11-38 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On  
 11-39 request, the utility commission [~~state agency with jurisdiction~~  
 11-40 ~~over rates charged by water and sewer utilities~~] shall provide, at a  
 11-41 reasonable cost, electronic copies of or Internet access to all  
 11-42 information provided to the utility commission [agency] under  
 11-43 Sections 13.016 and [7] 13.043 [7] and Subchapter F [13.187] to the  
 11-44 extent that the information is available and is not confidential.  
 11-45 Copies of all information provided to the utility commission  
 11-46 [~~agency~~] shall be provided to the Office of Public Utility Counsel,  
 11-47 on request, at no cost to the office.

11-48 SECTION 25. Subsection (b), Section 13.133, Water Code, is  
 11-49 amended to read as follows:

11-50 (b) The regulatory authority may require, by order or  
 11-51 subpoena served on any utility, the production within this state at  
 11-52 the time and place it may designate of any books, accounts, papers,  
 11-53 or records kept by that utility outside the state or verified copies  
 11-54 of them if the regulatory authority [~~commission~~] so orders. A  
 11-55 utility failing or refusing to comply with such an order or subpoena  
 11-56 violates this chapter.

11-57 SECTION 26. Section 13.136, Water Code, is amended by  
 11-58 amending Subsections (b) and (c) and adding Subsection (b-1) to  
 11-59 read as follows:

11-60 (b) The utility commission by rule shall require each [Each]  
 11-61 utility to annually [shall] file a service, [and] financial, and  
 11-62 normalized earnings report in a form and at times specified by  
 11-63 utility commission rule. The report must include information  
 11-64 sufficient to enable the utility commission to properly monitor  
 11-65 utilities in this state. The utility commission shall make  
 11-66 available to the public information in the report the utility does  
 11-67 not file as confidential.

11-68 (b-1) The utility commission shall provide copies of a  
 11-69 report described by Subsection (b) that include information filed

12-1 as confidential to the Office of Public Utility Counsel on request,  
 12-2 at no cost to the office.

12-3 (c) Every water supply or sewer service corporation shall  
 12-4 file with the utility commission tariffs showing all rates that are  
 12-5 subject to the appellate jurisdiction of the utility commission and  
 12-6 that are in force at the time for any utility service, product, or  
 12-7 commodity offered. Every water supply or sewer service corporation  
 12-8 shall file with and as a part of those tariffs all rules and  
 12-9 regulations relating to or affecting the rates, utility service,  
 12-10 product, or commodity furnished. The filing required under this  
 12-11 subsection shall be for informational purposes only.

12-12 SECTION 27. Section 13.137, Water Code, is amended to read  
 12-13 as follows:

12-14 Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF  
 12-15 UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

12-16 (1) make available and notify its customers of a  
 12-17 business location where its customers may make payments to prevent  
 12-18 disconnection of or to restore service:

12-19 (A) in each county in which the utility provides  
 12-20 service; or

12-21 (B) not more than 20 miles from the residence of  
 12-22 any residential customer if there is no location to receive  
 12-23 payments in the county; and

12-24 (2) have an office in a county of this state or in the  
 12-25 immediate area in which its property or some part of its property is  
 12-26 located in which it shall keep all books, accounts, records, and  
 12-27 memoranda required by the utility commission to be kept in this  
 12-28 state.

12-29 (b) The utility commission by rule may provide for waiving  
 12-30 the requirements of Subsection (a)(1) for a utility for which  
 12-31 meeting those requirements would cause a rate increase or otherwise  
 12-32 harm or inconvenience customers. The rules must provide for an  
 12-33 additional 14 days to be given for a customer to pay before a  
 12-34 utility that is granted a waiver may disconnect service for late  
 12-35 payment.

12-36 (c) Books, accounts, records, or memoranda required by the  
 12-37 regulatory authority to be kept in the state may not be removed from  
 12-38 the state, except on conditions prescribed by the utility  
 12-39 commission.

12-40 SECTION 28. Subsection (b), (c), and (f), Section 13.1396,  
 12-41 Water Code, are amended to read as follows:

12-42 (b) An affected utility shall submit to the office of  
 12-43 emergency management of each county in which the utility has more  
 12-44 than one customer, the utility commission [~~Public Utility~~  
 12-45 ~~Commission of Texas~~], and the office of emergency management of the  
 12-46 governor a copy of:

12-47 (1) the affected utility's emergency preparedness plan  
 12-48 approved under Section 13.1395; and

12-49 (2) the commission's notification to the affected  
 12-50 utility that the plan is accepted.

12-51 (c) Each affected utility shall submit to the utility  
 12-52 commission, each electric utility that provides transmission and  
 12-53 distribution service to the affected utility, each retail electric  
 12-54 provider that sells electric power to the affected utility, the  
 12-55 office of emergency management of each county in which the utility  
 12-56 has water and wastewater facilities that qualify for critical load  
 12-57 status under rules adopted by the utility commission [~~Public~~  
 12-58 ~~Utility Commission of Texas, the Public Utility Commission of~~  
 12-59 ~~Texas~~], and the division of emergency management of the governor:

12-60 (1) information identifying the location and  
 12-61 providing a general description of all water and wastewater  
 12-62 facilities that qualify for critical load status; and

12-63 (2) emergency contact information for the affected  
 12-64 utility, including:

12-65 (A) the person who will serve as a point of  
 12-66 contact and the person's telephone number;

12-67 (B) the person who will serve as an alternative  
 12-68 point of contact and the person's telephone number; and

12-69 (C) the affected utility's mailing address.

13-1 (f) Not later than May 1 of each year, each electric utility  
 13-2 and each retail electric provider shall determine whether the  
 13-3 facilities of the affected utility qualify for critical load status  
 13-4 under rules adopted by the utility commission [~~Public Utility~~  
 13-5 ~~Commission of Texas~~].

13-6 SECTION 29. Subsection (b), Section 13.142, Water Code, is  
 13-7 amended to read as follows:

13-8 (b) The utility commission shall adopt rules concerning  
 13-9 payment of utility bills that are consistent with Chapter 2251,  
 13-10 Government Code.

13-11 SECTION 30. Section 13.144, Water Code, is amended to read  
 13-12 as follows:

13-13 Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A  
 13-14 district or authority created under Section 52, Article III, or  
 13-15 Section 59, Article XVI, Texas Constitution, a retail public  
 13-16 utility, a wholesale water service, or other person providing a  
 13-17 retail public utility with a wholesale water supply shall provide  
 13-18 the utility commission with a certified copy of any wholesale water  
 13-19 supply contract with a retail public utility within 30 days after  
 13-20 the date of the execution of the contract. The submission must  
 13-21 include the amount of water being supplied, term of the contract,  
 13-22 consideration being given for the water, purpose of use, location  
 13-23 of use, source of supply, point of delivery, limitations on the  
 13-24 reuse of water, a disclosure of any affiliated interest between the  
 13-25 parties to the contract, and any other condition or agreement  
 13-26 relating to the contract.

13-27 SECTION 31. Subsection (a), Section 13.147, Water Code, is  
 13-28 amended to read as follows:

13-29 (a) A retail public utility providing water service may  
 13-30 contract with a retail public utility providing sewer service to  
 13-31 bill and collect the sewer service provider's fees and payments as  
 13-32 part of a consolidated process with the billing and collection of  
 13-33 the water service provider's fees and payments. The water service  
 13-34 provider may provide that service only for customers who are served  
 13-35 by both providers in an area covered by both providers'  
 13-36 certificates of public convenience and necessity. If the water  
 13-37 service provider refuses to enter into a contract under this  
 13-38 section or if the water service provider and sewer service provider  
 13-39 cannot agree on the terms of a contract, the sewer service provider  
 13-40 may petition the utility commission to issue an order requiring the  
 13-41 water service provider to provide that service.

13-42 SECTION 32. Subsection (b), Section 13.181, Water Code, is  
 13-43 amended to read as follows:

13-44 (b) Subject to this chapter, the utility commission has all  
 13-45 authority and power of the state to ensure compliance with the  
 13-46 obligations of utilities under this chapter. For this purpose the  
 13-47 regulatory authority may fix and regulate rates of utilities,  
 13-48 including rules and regulations for determining the classification  
 13-49 of customers and services and for determining the applicability of  
 13-50 rates. A rule or order of the regulatory authority may not conflict  
 13-51 with the rulings of any federal regulatory body. The utility  
 13-52 commission may adopt rules which authorize a utility which is  
 13-53 permitted under Section 13.242(c) to provide service without a  
 13-54 certificate of public convenience and necessity to request or  
 13-55 implement a rate increase and operate according to rules,  
 13-56 regulations, and standards of service other than those otherwise  
 13-57 required under this chapter provided that rates are just and  
 13-58 reasonable for customers and the utility and that service is safe,  
 13-59 adequate, efficient, and reasonable.

13-60 SECTION 33. Subsections (c) and (d), Section 13.182, Water  
 13-61 Code, are amended to read as follows:

13-62 (c) For ratemaking purposes, the utility commission may  
 13-63 treat two or more municipalities served by a utility as a single  
 13-64 class wherever the utility commission considers that treatment to  
 13-65 be appropriate.

13-66 (d) The utility commission by rule shall establish a  
 13-67 preference that rates under a consolidated tariff be consolidated  
 13-68 by region. The regions under consolidated tariffs must be  
 13-69 determined on a case-by-case basis.

14-1 SECTION 34. Subsection (d), Section 13.183, Water Code, is  
 14-2 amended to read as follows:

14-3 (d) A regulatory authority other than the utility  
 14-4 commission may not approve an acquisition adjustment for a system  
 14-5 purchased before the effective date of an ordinance authorizing  
 14-6 acquisition adjustments.

14-7 SECTION 35. Subsection (a), Section 13.184, Water Code, is  
 14-8 amended to read as follows:

14-9 (a) Unless the utility commission establishes alternate  
 14-10 rate methodologies in accordance with Section 13.183(c), the  
 14-11 utility commission may not prescribe any rate that will yield more  
 14-12 than a fair return on the invested capital used and useful in  
 14-13 rendering service to the public. The governing body of a  
 14-14 municipality exercising its original jurisdiction over rates and  
 14-15 services may use alternate ratemaking methodologies established by  
 14-16 ordinance or by utility commission rule in accordance with Section  
 14-17 13.183(c). Unless the municipal regulatory authority uses  
 14-18 alternate ratemaking methodologies established by ordinance or by  
 14-19 utility commission rule in accordance with Section 13.183(c), it  
 14-20 may not prescribe any rate that will yield more than a fair return  
 14-21 on the invested capital used and useful in rendering service to the  
 14-22 public.

14-23 SECTION 36. Subsections (d) and (h), Section 13.185, Water  
 14-24 Code, are amended to read as follows:

14-25 (d) Net income is the total revenues of the utility less all  
 14-26 reasonable and necessary expenses as determined by the regulatory  
 14-27 authority. The regulatory authority shall:

14-28 (1) base a utility's expenses on historic test year  
 14-29 information adjusted for known and measurable changes, as  
 14-30 determined by utility commission rules; and

14-31 (2) determine expenses and revenues in a manner  
 14-32 consistent with Subsections (e) through (h) of this section.

14-33 (h) The regulatory authority may not include for ratemaking  
 14-34 purposes:

14-35 (1) legislative advocacy expenses, whether made  
 14-36 directly or indirectly, including legislative advocacy expenses  
 14-37 included in trade association dues;

14-38 (2) costs of processing a refund or credit under this  
 14-39 subchapter [Section 13.187 of this chapter]; or

14-40 (3) any expenditure found by the regulatory authority  
 14-41 to be unreasonable, unnecessary, or not in the public interest,  
 14-42 including executive salaries, advertising expenses, legal  
 14-43 expenses, and civil penalties or fines.

14-44 SECTION 37. Section 13.187, Water Code, is amended to read  
 14-45 as follows:

14-46 Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO  
 14-47 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This  
 14-48 section applies only to a Class A utility.

14-49 (a-1) A utility may not make changes in its rates except by  
 14-50 sending by mail or e-mail [delivering] a statement of intent to each  
 14-51 ratepayer and to [with] the regulatory authority having original  
 14-52 jurisdiction at least 35 [60] days before the effective date of the  
 14-53 proposed change. The utility may send the statement of intent to a  
 14-54 ratepayer by e-mail only if the ratepayer has agreed to receive  
 14-55 communications electronically. The effective date of the new rates  
 14-56 must be the first day of a billing period, and the new rates may not  
 14-57 apply to service received before the effective date of the new  
 14-58 rates. The statement of intent must include:

14-59 (1) the information required by the regulatory  
 14-60 authority's rules;

14-61 (2) a billing comparison regarding the existing water  
 14-62 rate and the new water rate computed for the use of:

14-63 (A) 10,000 gallons of water; and

14-64 (B) 30,000 gallons of water; ~~and~~

14-65 (3) a billing comparison regarding the existing sewer  
 14-66 rate and the new sewer rate computed for the use of 10,000 gallons,  
 14-67 unless the utility proposes a flat rate for sewer services; and

14-68 (4) a description of the process by which a ratepayer  
 14-69 may intervene in the ratemaking proceeding.

15-1 (b) The utility shall mail, send by e-mail, or deliver a [A]  
 15-2 copy of the statement of intent [shall be mailed, sent by e-mail, or  
 15-3 delivered] to the Office of Public Utility Counsel, appropriate  
 15-4 offices of each affected municipality, and [to] any other affected  
 15-5 persons as required by the regulatory authority's rules.

15-6 (c) When the statement of intent is delivered, the utility  
 15-7 shall file with the regulatory authority an application to change  
 15-8 rates. The application must include information the regulatory  
 15-9 authority requires by rule and any appropriate cost and rate  
 15-10 schedules and written testimony supporting the requested rate  
 15-11 increase. If the utility fails to provide within a reasonable time  
 15-12 after the application is filed the necessary documentation or other  
 15-13 evidence that supports the costs and expenses that are shown in the  
 15-14 application, the regulatory authority may disallow the  
 15-15 nonsupported costs or expenses.

15-16 (d) Except as provided by Subsections [Subsection] (d-1)  
 15-17 and (e), if the application or the statement of intent is not  
 15-18 substantially complete or does not comply with the regulatory  
 15-19 authority's rules, it may be rejected and the effective date of the  
 15-20 rate change may be suspended until a properly completed application  
 15-21 is accepted by the regulatory authority and a proper statement of  
 15-22 intent is provided. The utility commission may also suspend the  
 15-23 effective date of any rate change if the utility does not have a  
 15-24 certificate of public convenience and necessity or a completed  
 15-25 application for a certificate or to transfer a certificate pending  
 15-26 before the utility commission or if the utility is delinquent in  
 15-27 paying the assessment and any applicable penalties or interest  
 15-28 required by Section 5.701(n) [of this code].

15-29 (d-1) After written notice to the utility, a local  
 15-30 regulatory authority may suspend the effective date of a rate  
 15-31 change for not more than 90 days from the proposed effective date ~~[,~~  
 15-32 ~~except that the suspension shall be extended by two days for each~~  
 15-33 ~~day a hearing exceeds 15 days].~~ If the local regulatory authority  
 15-34 does not make a final determination on the proposed rate before the  
 15-35 expiration of the ~~[applicable]~~ suspension period, the proposed rate  
 15-36 shall be considered approved. This [The] approval is subject to the  
 15-37 authority of the local regulatory authority thereafter to continue  
 15-38 [authority's continuation of] a hearing in progress.

15-39 (e) After written notice to the utility, the utility  
 15-40 commission may suspend the effective date of a rate change for not  
 15-41 more than 150 days from the proposed effective date. If the utility  
 15-42 commission does not make a final determination on the proposed rate  
 15-43 before the expiration of the suspension period, the proposed rate  
 15-44 shall be considered approved. This approval is subject to the  
 15-45 authority of the utility commission thereafter to continue a  
 15-46 hearing in progress [If, before the 91st day after the effective  
 15-47 date of the rate change, the regulatory authority receives a  
 15-48 complaint from any affected municipality, or from the lesser of  
 15-49 1,000 or 10 percent of the ratepayers of the utility over whose  
 15-50 rates the regulatory authority has original jurisdiction, the  
 15-51 regulatory authority shall set the matter for hearing].

15-52 (e-1) The 150-day period described by Subsection (e) shall  
 15-53 be extended two days for each day a hearing exceeds 15 days.

15-54 (f) The regulatory authority shall, not later than the 30th  
 15-55 day after the effective date of the change, begin a hearing to  
 15-56 determine the propriety of the change [may set the matter for  
 15-57 hearing on its own motion at any time within 120 days after the  
 15-58 effective date of the rate change]. If the regulatory authority is  
 15-59 the utility commission, the utility commission may refer the matter  
 15-60 to the State Office of Administrative Hearings as provided by  
 15-61 utility commission rules [If more than half of the ratepayers of the  
 15-62 utility receive service in a county with a population of more than  
 15-63 3.3 million, the hearing must be held at a location in that county].

15-64 (g) A local regulatory authority [The] hearing described by  
 15-65 this section may be informal.

15-66 (g-1) If the regulatory authority is the utility  
 15-67 commission, the utility commission shall give reasonable notice of  
 15-68 the hearing, including notice to the governing body of each  
 15-69 affected municipality and county. The utility is not required to

16-1 provide a formal answer or file any other formal pleading in  
 16-2 response to the notice, and the absence of an answer does not affect  
 16-3 an order for a hearing.

16-4 (h) If, after hearing, the regulatory authority finds the  
 16-5 rates currently being charged or those proposed to be charged are  
 16-6 unreasonable or in violation of law, the regulatory authority shall  
 16-7 determine the rates to be charged by the utility and shall fix the  
 16-8 rates by order served on the utility.

16-9 (i) A utility may put a changed rate into effect throughout  
 16-10 the area in which the utility sought to change its rates, including  
 16-11 an area over which the utility commission is exercising appellate  
 16-12 or original jurisdiction, by filing a bond with the utility  
 16-13 commission if the suspension period has been extended under  
 16-14 Subsection (e-1) and the utility commission fails to make a final  
 16-15 determination before the 151st day after the date the rate change  
 16-16 would otherwise be effective.

16-17 (j) The bonded rate may not exceed the proposed rate. The  
 16-18 bond must be payable to the utility commission in an amount, in a  
 16-19 form, and with a surety approved by the utility commission and  
 16-20 conditioned on refund [The regulatory authority, pending final  
 16-21 action in a rate proceeding, may order the utility to deposit all or  
 16-22 part of the rate increase received or to be received into an escrow  
 16-23 account with a financial institution approved by the regulatory  
 16-24 authority].

16-25 (k) Unless otherwise agreed to by the parties to the rate  
 16-26 proceeding, the utility shall refund or credit against future  
 16-27 bills:

16-28 (1) all sums collected under the bonded rates [during  
 16-29 the pendency of the rate proceeding] in excess of the rate finally  
 16-30 ordered; and

16-31 (2) [plus] interest on those sums at the current  
 16-32 interest rate as determined by the regulatory authority.

16-33 [~~(j) For good cause shown, the regulatory authority may~~  
 16-34 ~~authorize the release of funds to the utility from the escrow~~  
 16-35 ~~account during the pendency of the proceeding.~~

16-36 [~~(k) If the regulatory authority receives at least the~~  
 16-37 ~~number of complaints from ratepayers required for the regulatory~~  
 16-38 ~~authority to set a hearing under Subsection (c), the regulatory~~  
 16-39 ~~authority may, pending the hearing and a decision, suspend the date~~  
 16-40 ~~the rate change would otherwise be effective. Except as provided by~~  
 16-41 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~  
 16-42 ~~than:~~

16-43 [~~(1) 90 days by a local regulatory authority; or~~

16-44 [~~(2) 150 days by the commission.]~~

16-45 (l) At any time during the pendency of the rate proceeding  
 16-46 the regulatory authority may fix interim rates to remain in effect  
 16-47 during the applicable suspension period under Subsection (d-1) or  
 16-48 Subsections (e) and (e-1) or until a final determination is made on  
 16-49 the proposed rate. If the regulatory authority does not establish  
 16-50 interim rates, the rates in effect when the application described  
 16-51 by Subsection (c) was filed continue in effect during the  
 16-52 suspension period.

16-53 (m) If the regulatory authority sets a final rate that is  
 16-54 higher than the interim rate, the utility shall be allowed to  
 16-55 collect the difference between the interim rate and final rate  
 16-56 unless otherwise agreed to by the parties to the rate proceeding.

16-57 (n) For good cause shown, the regulatory authority may at  
 16-58 any time during the proceeding require the utility to refund money  
 16-59 collected under a proposed rate before the rate was suspended or an  
 16-60 interim rate was established to the extent the proposed rate  
 16-61 exceeds the existing rate or the interim rate.

16-62 (o) If a regulatory authority other than the utility  
 16-63 commission establishes interim rates or bonded rates [an escrow  
 16-64 account], the regulatory authority must make a final determination  
 16-65 on the rates not later than the first anniversary of the effective  
 16-66 date of the interim rates or bonded [escrowed] rates or the rates  
 16-67 are automatically approved as requested by the utility.

16-68 (p) Except to implement a rate adjustment provision  
 16-69 approved by the regulatory authority by rule or ordinance, as



17-1 applicable, or to adjust the rates of a newly acquired utility  
 17-2 system, a utility or two or more utilities under common control and  
 17-3 ownership may not file a statement of intent to increase its rates  
 17-4 more than once in a 12-month period, unless the regulatory  
 17-5 authority determines that a financial hardship exists. If the  
 17-6 regulatory authority requires the utility to deliver a corrected  
 17-7 statement of intent, the utility is not considered to be in  
 17-8 violation of the 12-month filing requirement.

17-9 SECTION 38. Subchapter F, Chapter 13, Water Code, is  
 17-10 amended by adding Sections 13.1871 and 13.1872 to read as follows:

17-11 Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO  
 17-12 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as  
 17-13 provided by Section 13.1872, this section applies only to a Class B  
 17-14 utility.

17-15 (b) A utility may not make changes in its rates except by  
 17-16 sending by mail or e-mail a statement of intent to each ratepayer  
 17-17 and to the regulatory authority having original jurisdiction at  
 17-18 least 35 days before the effective date of the proposed change. The  
 17-19 utility may send the statement of intent to a ratepayer by e-mail  
 17-20 only if the ratepayer has agreed to receive communications  
 17-21 electronically. The effective date of the new rates must be the  
 17-22 first day of a billing period, and the new rates may not apply to  
 17-23 service received before the effective date of the new rates. The  
 17-24 statement of intent must include:

17-25 (1) the information required by the regulatory  
 17-26 authority's rules;

17-27 (2) a billing comparison regarding the existing water  
 17-28 rate and the new water rate computed for the use of:

17-29 (A) 10,000 gallons of water; and

17-30 (B) 30,000 gallons of water;

17-31 (3) a billing comparison regarding the existing sewer  
 17-32 rate and the new sewer rate computed for the use of 10,000 gallons,  
 17-33 unless the utility proposes a flat rate for sewer services; and

17-34 (4) a description of the process by which a ratepayer  
 17-35 may file a complaint under Subsection (i).

17-36 (c) The utility shall mail, send by e-mail, or deliver a  
 17-37 copy of the statement of intent to the appropriate offices of each  
 17-38 affected municipality and to any other affected persons as required  
 17-39 by the regulatory authority's rules.

17-40 (d) When the statement of intent is delivered, the utility  
 17-41 shall file with the regulatory authority an application to change  
 17-42 rates. The application must include information the regulatory  
 17-43 authority requires by rule and any appropriate cost and rate  
 17-44 schedules supporting the requested rate increase. In adopting  
 17-45 rules relating to the information required in the application, the  
 17-46 utility commission shall ensure that a utility can file a less  
 17-47 burdensome and complex application than is required of a Class A  
 17-48 utility. If the utility fails to provide within a reasonable time  
 17-49 after the application is filed the necessary documentation or other  
 17-50 evidence that supports the costs and expenses that are shown in the  
 17-51 application, the regulatory authority may disallow the  
 17-52 nonsupported costs or expenses.

17-53 (e) Except as provided by Subsection (f) or (g), if the  
 17-54 application or the statement of intent is not substantially  
 17-55 complete or does not comply with the regulatory authority's rules,  
 17-56 it may be rejected and the effective date of the rate change may be  
 17-57 suspended until a properly completed application is accepted by the  
 17-58 regulatory authority and a proper statement of intent is provided.  
 17-59 The utility commission may also suspend the effective date of any  
 17-60 rate change if the utility does not have a certificate of public  
 17-61 convenience and necessity or a completed application for a  
 17-62 certificate or to transfer a certificate pending before the utility  
 17-63 commission or if the utility is delinquent in paying the assessment  
 17-64 and any applicable penalties or interest required by Section  
 17-65 5.701(n).

17-66 (f) After written notice to the utility, a local regulatory  
 17-67 authority may suspend the effective date of a rate change for not  
 17-68 more than 90 days from the proposed effective date. If the local  
 17-69 regulatory authority does not make a final determination on the

18-1 proposed rate before the expiration of the suspension period, the  
 18-2 proposed rate shall be considered approved. This approval is  
 18-3 subject to the authority of the local regulatory authority  
 18-4 thereafter to continue a hearing in progress.

18-5 (g) After written notice to the utility, the utility  
 18-6 commission may suspend the effective date of a rate change for not  
 18-7 more than 205 days from the proposed effective date. If the utility  
 18-8 commission does not make a final determination on the proposed rate  
 18-9 before the expiration of the suspension period, the proposed rate  
 18-10 shall be considered approved. This approval is subject to the  
 18-11 authority of the utility commission thereafter to continue a  
 18-12 hearing in progress.

18-13 (h) The 205-day period described by Subsection (g) shall be  
 18-14 extended by two days for each day a hearing exceeds 15 days.

18-15 (i) If, before the 91st day after the effective date of the  
 18-16 rate change, the regulatory authority receives a complaint from any  
 18-17 affected municipality, or from the lesser of 1,000 or 10 percent of  
 18-18 the ratepayers of the utility over whose rates the regulatory  
 18-19 authority has original jurisdiction, the regulatory authority  
 18-20 shall set the matter for hearing.

18-21 (j) If the regulatory authority receives at least the number  
 18-22 of complaints from ratepayers required for the regulatory authority  
 18-23 to set a hearing under Subsection (i), the regulatory authority  
 18-24 may, pending the hearing and a decision, suspend the date the rate  
 18-25 change would otherwise be effective. Except as provided by  
 18-26 Subsection (h), the proposed rate may not be suspended for longer  
 18-27 than:

18-28 (1) 90 days by a local regulatory authority; or

18-29 (2) 205 days by the utility commission.

18-30 (k) The regulatory authority may set the matter for hearing  
 18-31 on its own motion at any time within 120 days after the effective  
 18-32 date of the rate change.

18-33 (l) The hearing may be informal.

18-34 (m) The regulatory authority shall give reasonable notice  
 18-35 of the hearing, including notice to the governing body of each  
 18-36 affected municipality and county. The utility is not required to  
 18-37 provide a formal answer or file any other formal pleading in  
 18-38 response to the notice, and the absence of an answer does not affect  
 18-39 an order for a hearing.

18-40 (n) The utility shall mail notice of the hearing to each  
 18-41 ratepayer before the hearing. The notice must include a  
 18-42 description of the process by which a ratepayer may intervene in the  
 18-43 ratemaking proceeding.

18-44 (o) If, after hearing, the regulatory authority finds the  
 18-45 rates currently being charged or those proposed to be charged are  
 18-46 unreasonable or in violation of law, the regulatory authority shall  
 18-47 determine the rates to be charged by the utility and shall fix the  
 18-48 rates by order served on the utility.

18-49 (p) A utility may put a changed rate into effect throughout  
 18-50 the area in which the utility sought to change its rates, including  
 18-51 an area over which the utility commission is exercising appellate  
 18-52 or original jurisdiction, by filing a bond with the utility  
 18-53 commission if the suspension period has been extended under  
 18-54 Subsection (h) and the utility commission fails to make a final  
 18-55 determination before the 206th day after the date the rate change  
 18-56 would otherwise be effective.

18-57 (q) The bonded rate may not exceed the proposed rate. The  
 18-58 bond must be payable to the utility commission in an amount, in a  
 18-59 form, and with a surety approved by the utility commission and  
 18-60 conditioned on refund.

18-61 (r) Unless otherwise agreed to by the parties to the rate  
 18-62 proceeding, the utility shall refund or credit against future  
 18-63 bills:

18-64 (1) all sums collected under the bonded rates in  
 18-65 excess of the rate finally ordered; and

18-66 (2) interest on those sums at the current interest  
 18-67 rate as determined by the regulatory authority.

18-68 (s) At any time during the pendency of the rate proceeding  
 18-69 the regulatory authority may fix interim rates to remain in effect

19-1 during the applicable suspension period under Subsection (f) or  
 19-2 Subsections (g) and (h) or until a final determination is made on  
 19-3 the proposed rate. If the regulatory authority does not establish  
 19-4 interim rates, the rates in effect when the application described  
 19-5 by Subsection (e) was filed continue in effect during the  
 19-6 suspension period.

19-7 (t) If the regulatory authority sets a final rate that is  
 19-8 higher than the interim rate, the utility shall be allowed to  
 19-9 collect the difference between the interim rate and final rate  
 19-10 unless otherwise agreed to by the parties to the rate proceeding.

19-11 (u) For good cause shown, the regulatory authority may at  
 19-12 any time during the proceeding require the utility to refund money  
 19-13 collected under a proposed rate before the rate was suspended or an  
 19-14 interim rate was established to the extent the proposed rate  
 19-15 exceeds the existing rate or the interim rate.

19-16 (v) If a regulatory authority other than the utility  
 19-17 commission establishes interim rates or bonded rates, the  
 19-18 regulatory authority must make a final determination on the rates  
 19-19 not later than the first anniversary of the effective date of the  
 19-20 interim rates or bonded rates or the rates are automatically  
 19-21 approved as requested by the utility.

19-22 (w) Except to implement a rate adjustment provision  
 19-23 approved by the regulatory authority by rule or ordinance, as  
 19-24 applicable, or to adjust the rates of a newly acquired utility  
 19-25 system, a utility or two or more utilities under common control and  
 19-26 ownership may not file a statement of intent to increase its rates  
 19-27 more than once in a 12-month period, unless the regulatory  
 19-28 authority determines that a financial hardship exists. If the  
 19-29 regulatory authority requires the utility to deliver a corrected  
 19-30 statement of intent, the utility is not considered to be in  
 19-31 violation of the 12-month filing requirement.

19-32 Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT. (a)  
 19-33 This section applies only to a Class C utility.

19-34 (b) For purposes of this section, "price index" means an  
 19-35 appropriate price index designated annually by the utility  
 19-36 commission for the purposes of this section.

19-37 (c) A utility may not make changes in its rates except by:

19-38 (1) filing an application for a rate adjustment under  
 19-39 the procedures described by Subsection (e) and sending by mail, or  
 19-40 by e-mail if the ratepayer has agreed to receive communications  
 19-41 electronically, a notice to each ratepayer describing the proposed  
 19-42 rate adjustment at least 30 days before the effective date of the  
 19-43 proposed change; or

19-44 (2) complying with the procedures to change rates  
 19-45 described by Section 13.1871.

19-46 (d) The utility shall mail, send by e-mail, or deliver a  
 19-47 copy of the application to the appropriate offices of each affected  
 19-48 municipality and to any other affected persons as required by the  
 19-49 regulatory authority's rules.

19-50 (e) The utility commission by rule shall adopt procedures to  
 19-51 allow a utility to receive without a hearing an annual rate  
 19-52 adjustment based on changes in the price index. The rules must:

19-53 (1) include standard language to be included in the  
 19-54 notice described by Subsection (c)(1) describing the rate  
 19-55 adjustment process; and

19-56 (2) provide that an annual rate adjustment described  
 19-57 by this section may not result in a rate increase to any class or  
 19-58 category of ratepayer of more than the lesser of:

19-59 (A) five percent; or

19-60 (B) the percentage increase in the price index  
 19-61 between the year preceding the year in which the utility requests  
 19-62 the adjustment and the year in which the utility requests the  
 19-63 adjustment.

19-64 (f) A utility may adjust the utility's rates using the  
 19-65 procedures adopted under Subsection (e) not more than once each  
 19-66 year and not more than four times between rate proceedings  
 19-67 described by Section 13.1871.

19-68 SECTION 39. Section 13.188, Water Code, is amended to read  
 19-69 as follows:

20-1           Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a)  
 20-2 Notwithstanding any other provision in this chapter, the utility  
 20-3 commission by rule shall adopt a procedure allowing a utility to  
 20-4 file with the utility commission an application to timely adjust  
 20-5 the utility's rates to reflect an increase or decrease in  
 20-6 documented energy costs in a pass through clause. The utility  
 20-7 commission, by rule, shall require the pass through of documented  
 20-8 decreases in energy costs within a reasonable time. The pass  
 20-9 through, whether a decrease or increase, shall be implemented on no  
 20-10 later than an annual basis, unless the utility commission  
 20-11 determines a special circumstance applies.

20-12           (b) Notwithstanding any other provision to the contrary,  
 20-13 this adjustment is an uncontested matter not subject to a contested  
 20-14 case hearing. However, the utility commission [~~executive director~~]  
 20-15 shall hold an uncontested public meeting:

20-16                     (1) on the request of a member of the legislature who  
 20-17 represents the area served by the water and sewer utility; or

20-18                     (2) if the utility commission [~~executive director~~]  
 20-19 determines that there is substantial public interest in the matter.

20-20           (c) A proceeding under this section is not a rate case and  
 20-21 Sections [~~Section~~] 13.187, 13.1871, and 13.1872 do [~~does~~] not  
 20-22 apply.

20-23           SECTION 40. Subsections (a), (d), and (e), Section 13.241,  
 20-24 Water Code, are amended to read as follows:

20-25           (a) In determining whether to grant or amend a certificate  
 20-26 of public convenience and necessity, the utility commission shall  
 20-27 ensure that the applicant possesses the financial, managerial, and  
 20-28 technical capability to provide continuous and adequate service.

20-29           (d) Before the utility commission grants a new certificate  
 20-30 of convenience and necessity for an area which would require  
 20-31 construction of a physically separate water or sewer system, the  
 20-32 applicant must demonstrate to the utility commission that  
 20-33 regionalization or consolidation with another retail public  
 20-34 utility is not economically feasible.

20-35           (e) The utility commission by rule shall develop a  
 20-36 standardized method for determining under Section 13.246(f) which  
 20-37 of two or more retail public utilities or water supply or sewer  
 20-38 service corporations that apply for a certificate of public  
 20-39 convenience and necessity to provide water or sewer utility service  
 20-40 to an uncertificated area located in an economically distressed  
 20-41 area is more capable financially, managerially, and technically of  
 20-42 providing continuous and adequate service. In this subsection,  
 20-43 "economically distressed area" has the meaning assigned by Section  
 20-44 15.001.

20-45           SECTION 41. Subsections (a) and (c), Section 13.242, Water  
 20-46 Code, are amended to read as follows:

20-47           (a) Unless otherwise specified, a utility, a utility  
 20-48 operated by an affected county, or a water supply or sewer service  
 20-49 corporation may not in any way render retail water or sewer utility  
 20-50 service directly or indirectly to the public without first having  
 20-51 obtained from the utility commission a certificate that the present  
 20-52 or future public convenience and necessity will require that  
 20-53 installation, operation, or extension, and except as otherwise  
 20-54 provided by this subchapter, a retail public utility may not  
 20-55 furnish, make available, render, or extend retail water or sewer  
 20-56 utility service to any area to which retail water or sewer utility  
 20-57 service is being lawfully furnished by another retail public  
 20-58 utility without first having obtained a certificate of public  
 20-59 convenience and necessity that includes the area in which the  
 20-60 consuming facility is located.

20-61           (c) The utility commission may by rule allow a municipality  
 20-62 or utility or water supply corporation to render retail water  
 20-63 service without a certificate of public convenience and necessity  
 20-64 if the municipality has given notice under Section 13.255 [~~of this~~  
 20-65 ~~code~~] that it intends to provide retail water service to an area or  
 20-66 if the utility or water supply corporation has less than 15  
 20-67 potential connections and is not within the certificated area of  
 20-68 another retail public utility.

20-69           SECTION 42. Section 13.244, Water Code, is amended to read

21-1 as follows:

21-2 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;  
 21-3 EVIDENCE AND CONSENT. (a) To obtain a certificate of public  
 21-4 convenience and necessity or an amendment to a certificate, a  
 21-5 public utility or water supply or sewer service corporation shall  
 21-6 submit to the utility commission an application for a certificate  
 21-7 or for an amendment as provided by this section.

21-8 (b) Each public utility and water supply or sewer service  
 21-9 corporation shall file with the utility commission a map or maps  
 21-10 showing all its facilities and illustrating separately facilities  
 21-11 for production, transmission, and distribution of its services, and  
 21-12 each certificated retail public utility shall file with the utility  
 21-13 commission a map or maps showing any facilities, customers, or area  
 21-14 currently being served outside its certificated areas.

21-15 (c) Each applicant for a certificate or for an amendment  
 21-16 shall file with the utility commission evidence required by the  
 21-17 utility commission to show that the applicant has received the  
 21-18 required consent, franchise, or permit of the proper municipality  
 21-19 or other public authority.

21-20 (d) An application for a certificate of public convenience  
 21-21 and necessity or for an amendment to a certificate must contain:

21-22 (1) a description of the proposed service area by:  
 21-23 (A) a metes and bounds survey certified by a  
 21-24 licensed state land surveyor or a registered professional land  
 21-25 surveyor;  
 21-26 (B) the Texas State Plane Coordinate System;  
 21-27 (C) verifiable landmarks, including a road,  
 21-28 creek, or railroad line; or  
 21-29 (D) if a recorded plat of the area exists, lot and  
 21-30 block number;

21-31 (2) a description of any requests for service in the  
 21-32 proposed service area;

21-33 (3) a capital improvements plan, including a budget  
 21-34 and estimated timeline for construction of all facilities necessary  
 21-35 to provide full service to the entire proposed service area;

21-36 (4) a description of the sources of funding for all  
 21-37 facilities;

21-38 (5) to the extent known, a description of current and  
 21-39 projected land uses, including densities;

21-40 (6) a current financial statement of the applicant;

21-41 (7) according to the tax roll of the central appraisal  
 21-42 district for each county in which the proposed service area is  
 21-43 located, a list of the owners of each tract of land that is:

21-44 (A) at least 50 acres; and

21-45 (B) wholly or partially located within the  
 21-46 proposed service area; and

21-47 (8) any other item required by the utility commission.

21-48 SECTION 43. Subsections (b), (c), (c-1), (c-2), (c-3), and  
 21-49 (e), Section 13.245, Water Code, are amended to read as follows:

21-50 (b) Except as provided by Subsections (c), (c-1), and (c-2),  
 21-51 the utility commission may not grant to a retail public utility a  
 21-52 certificate of public convenience and necessity for a service area  
 21-53 within the boundaries or extraterritorial jurisdiction of a  
 21-54 municipality without the consent of the municipality. The  
 21-55 municipality may not unreasonably withhold the consent. As a  
 21-56 condition of the consent, a municipality may require that all water  
 21-57 and sewer facilities be designed and constructed in accordance with  
 21-58 the municipality's standards for facilities.

21-59 (c) If a municipality has not consented under Subsection (b)  
 21-60 before the 180th day after the date the municipality receives the  
 21-61 retail public utility's application, the utility commission shall  
 21-62 grant the certificate of public convenience and necessity without  
 21-63 the consent of the municipality if the utility commission finds  
 21-64 that the municipality:

21-65 (1) does not have the ability to provide service; or

21-66 (2) has failed to make a good faith effort to provide  
 21-67 service on reasonable terms and conditions.

21-68 (c-1) If a municipality has not consented under Subsection  
 21-69 (b) before the 180th day after the date a landowner or a retail

22-1 public utility submits to the municipality a formal request for  
 22-2 service according to the municipality's application requirements  
 22-3 and standards for facilities on the same or substantially similar  
 22-4 terms as provided by the retail public utility's application to the  
 22-5 utility commission, including a capital improvements plan required  
 22-6 by Section 13.244(d)(3) or a subdivision plat, the utility  
 22-7 commission may grant the certificate of public convenience and  
 22-8 necessity without the consent of the municipality if:

22-9 (1) the utility commission makes the findings required  
 22-10 by Subsection (c);

22-11 (2) the municipality has not entered into a binding  
 22-12 commitment to serve the area that is the subject of the retail  
 22-13 public utility's application to the utility commission before the  
 22-14 180th day after the date the formal request was made; and

22-15 (3) the landowner or retail public utility that  
 22-16 submitted the formal request has not unreasonably refused to:

22-17 (A) comply with the municipality's service  
 22-18 extension and development process; or

22-19 (B) enter into a contract for water or sewer  
 22-20 services with the municipality.

22-21 (c-2) If a municipality refuses to provide service in the  
 22-22 proposed service area, as evidenced by a formal vote of the  
 22-23 municipality's governing body or an official notification from the  
 22-24 municipality, the utility commission is not required to make the  
 22-25 findings otherwise required by this section and may grant the  
 22-26 certificate of public convenience and necessity to the retail  
 22-27 public utility at any time after the date of the formal vote or  
 22-28 receipt of the official notification.

22-29 (c-3) The utility commission must include as a condition of  
 22-30 a certificate of public convenience and necessity granted under  
 22-31 Subsection (c-1) or (c-2) that all water and sewer facilities be  
 22-32 designed and constructed in accordance with the municipality's  
 22-33 standards for water and sewer facilities.

22-34 (e) If the utility commission makes a decision under  
 22-35 Subsection (d) regarding the grant of a certificate of public  
 22-36 convenience and necessity without the consent of the municipality,  
 22-37 the municipality or the retail public utility may appeal the  
 22-38 decision to the appropriate state district court. The court shall  
 22-39 hear the petition within 120 days after the date the petition is  
 22-40 filed. On final disposition, the court may award reasonable fees to  
 22-41 the prevailing party.

22-42 SECTION 44. Subsections (b) and (c), Section 13.2451, Water  
 22-43 Code, are amended to read as follows:

22-44 (b) The utility commission may not extend a municipality's  
 22-45 certificate of public convenience and necessity beyond its  
 22-46 extraterritorial jurisdiction if an owner of land that is located  
 22-47 wholly or partly outside the extraterritorial jurisdiction elects  
 22-48 to exclude some or all of the landowner's property within a proposed  
 22-49 service area in accordance with Section 13.246(h). This subsection  
 22-50 does not apply to a transfer of a certificate as approved by the  
 22-51 utility commission.

22-52 (c) The utility commission, after notice to the  
 22-53 municipality and an opportunity for a hearing, may decertify an  
 22-54 area outside a municipality's extraterritorial jurisdiction if the  
 22-55 municipality does not provide service to the area on or before the  
 22-56 fifth anniversary of the date the certificate of public convenience  
 22-57 and necessity was granted for the area. This subsection does not  
 22-58 apply to a certificate of public convenience and necessity for an  
 22-59 area:

22-60 (1) that was transferred to a municipality on approval  
 22-61 of the utility commission; and

22-62 (2) in relation to which the municipality has spent  
 22-63 public funds.

22-64 SECTION 45. Section 13.246, Water Code, is amended to read  
 22-65 as follows:

22-66 Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL;  
 22-67 FACTORS CONSIDERED. (a) If an application for a certificate of  
 22-68 public convenience and necessity or for an amendment to a  
 22-69 certificate is filed, the utility commission shall cause notice of

23-1 the application to be given to affected parties and to each county  
 23-2 and groundwater conservation district that is wholly or partly  
 23-3 included in the area proposed to be certified. If requested, the  
 23-4 utility commission shall fix a time and place for a hearing and give  
 23-5 notice of the hearing. Any person affected by the application may  
 23-6 intervene at the hearing.

23-7 (a-1) Except as otherwise provided by this subsection, in  
 23-8 addition to the notice required by Subsection (a), the utility  
 23-9 commission shall require notice to be mailed to each owner of a  
 23-10 tract of land that is at least 25 acres and is wholly or partially  
 23-11 included in the area proposed to be certified. Notice required  
 23-12 under this subsection must be mailed by first class mail to the  
 23-13 owner of the tract according to the most current tax appraisal rolls  
 23-14 of the applicable central appraisal district at the time the  
 23-15 utility commission received the application for the certificate or  
 23-16 amendment. Good faith efforts to comply with the requirements of  
 23-17 this subsection shall be considered adequate notice to landowners.  
 23-18 Notice under this subsection is not required for a matter filed with  
 23-19 the utility commission or the commission under:

23-20 (1) Section 13.248 or 13.255; or

23-21 (2) Chapter 65.

23-22 (b) The utility commission may grant applications and issue  
 23-23 certificates and amendments to certificates only if the utility  
 23-24 commission finds that a certificate or amendment is necessary for  
 23-25 the service, accommodation, convenience, or safety of the public.  
 23-26 The utility commission may issue a certificate or amendment as  
 23-27 requested, or refuse to issue it, or issue it for the construction  
 23-28 of only a portion of the contemplated system or facility or  
 23-29 extension, or for the partial exercise only of the right or  
 23-30 privilege and may impose special conditions necessary to ensure  
 23-31 that continuous and adequate service is provided.

23-32 (c) Certificates of public convenience and necessity and  
 23-33 amendments to certificates shall be granted by the utility  
 23-34 commission on a nondiscriminatory basis after consideration by the  
 23-35 utility commission of:

23-36 (1) the adequacy of service currently provided to the  
 23-37 requested area;

23-38 (2) the need for additional service in the requested  
 23-39 area, including whether any landowners, prospective landowners,  
 23-40 tenants, or residents have requested service;

23-41 (3) the effect of the granting of a certificate or of  
 23-42 an amendment on the recipient of the certificate or amendment, on  
 23-43 the landowners in the area, and on any retail public utility of the  
 23-44 same kind already serving the proximate area;

23-45 (4) the ability of the applicant to provide adequate  
 23-46 service, including meeting the standards of the commission, taking  
 23-47 into consideration the current and projected density and land use  
 23-48 of the area;

23-49 (5) the feasibility of obtaining service from an  
 23-50 adjacent retail public utility;

23-51 (6) the financial ability of the applicant to pay for  
 23-52 the facilities necessary to provide continuous and adequate service  
 23-53 and the financial stability of the applicant, including, if  
 23-54 applicable, the adequacy of the applicant's debt-equity ratio;

23-55 (7) environmental integrity;

23-56 (8) the probable improvement of service or lowering of  
 23-57 cost to consumers in that area resulting from the granting of the  
 23-58 certificate or amendment; and

23-59 (9) the effect on the land to be included in the  
 23-60 certificated area.

23-61 (d) The utility commission may require an applicant for a  
 23-62 certificate or for an amendment to provide a bond or other financial  
 23-63 assurance in a form and amount specified by the utility commission  
 23-64 to ensure that continuous and adequate utility service is provided.

23-65 (e) Where applicable, in addition to the other factors in  
 23-66 this section the utility commission shall consider the efforts of  
 23-67 the applicant:

23-68 (1) to extend service to any economically distressed  
 23-69 areas located within the service areas certificated to the

24-1 applicant; and

24-2 (2) to enforce the rules adopted under Section 16.343.

24-3 (f) If two or more retail public utilities or water supply  
24-4 or sewer service corporations apply for a certificate of public  
24-5 convenience and necessity to provide water or sewer utility service  
24-6 to an uncertificated area located in an economically distressed  
24-7 area and otherwise meet the requirements for obtaining a new  
24-8 certificate, the utility commission shall grant the certificate to  
24-9 the retail public utility or water supply or sewer service  
24-10 corporation that is more capable financially, managerially, and  
24-11 technically of providing continuous and adequate service.

24-12 (g) In this section, "economically distressed area" has the  
24-13 meaning assigned by Section 15.001.

24-14 (h) Except as provided by Subsection (i), a landowner who  
24-15 owns a tract of land that is at least 25 acres and that is wholly or  
24-16 partially located within the proposed service area may elect to  
24-17 exclude some or all of the landowner's property from the proposed  
24-18 service area by providing written notice to the utility commission  
24-19 before the 30th day after the date the landowner receives notice of  
24-20 a new application for a certificate of public convenience and  
24-21 necessity or for an amendment to an existing certificate of public  
24-22 convenience and necessity. The landowner's election is effective  
24-23 without a further hearing or other process by the utility  
24-24 commission. If a landowner makes an election under this  
24-25 subsection, the application shall be modified so that the electing  
24-26 landowner's property is not included in the proposed service area.  
24-27 An applicant for a certificate of public convenience and necessity  
24-28 that has land removed from its proposed certificated service area  
24-29 because of a landowner's election under this subsection may not be  
24-30 required to provide service to the removed land for any reason,  
24-31 including the violation of law or utility commission or commission  
24-32 rules by the water or sewer system of another person.

24-33 (i) A landowner is not entitled to make an election under  
24-34 Subsection (h) but is entitled to contest the inclusion of the  
24-35 landowner's property in the proposed service area at a hearing held  
24-36 by the utility commission regarding the application if the proposed  
24-37 service area is located within the boundaries or extraterritorial  
24-38 jurisdiction of a municipality with a population of more than  
24-39 500,000 and the municipality or a utility owned by the municipality  
24-40 is the applicant.

24-41 SECTION 46. Subsection (a), Section 13.247, Water Code, is  
24-42 amended to read as follows:

24-43 (a) If an area is within the boundaries of a municipality,  
24-44 all retail public utilities certified or entitled to certification  
24-45 under this chapter to provide service or operate facilities in that  
24-46 area may continue and extend service in its area of public  
24-47 convenience and necessity within the area pursuant to the rights  
24-48 granted by its certificate and this chapter, unless the  
24-49 municipality exercises its power of eminent domain to acquire the  
24-50 property of the retail public utility under Subsection (d). Except  
24-51 as provided by Section 13.255, a municipally owned or operated  
24-52 utility may not provide retail water and sewer utility service  
24-53 within the area certificated to another retail public utility  
24-54 without first having obtained from the utility commission a  
24-55 certificate of public convenience and necessity that includes the  
24-56 areas to be served.

24-57 SECTION 47. Section 13.248, Water Code, is amended to read  
24-58 as follows:

24-59 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts  
24-60 between retail public utilities designating areas to be served and  
24-61 customers to be served by those retail public utilities, when  
24-62 approved by the utility commission after public notice and hearing,  
24-63 are valid and enforceable and are incorporated into the appropriate  
24-64 areas of public convenience and necessity.

24-65 SECTION 48. Subsections (b), (c), and (e), Section 13.250,  
24-66 Water Code, are amended to read as follows:

24-67 (b) Unless the utility commission issues a certificate that  
24-68 neither the present nor future convenience and necessity will be  
24-69 adversely affected, the holder of a certificate or a person who



25-1 possesses facilities used to provide utility service shall not  
 25-2 discontinue, reduce, or impair service to a certified service area  
 25-3 or part of a certified service area except for:

25-4 (1) nonpayment of charges for services provided by the  
 25-5 certificate holder or a person who possesses facilities used to  
 25-6 provide utility service;

25-7 (2) nonpayment of charges for sewer service provided  
 25-8 by another retail public utility under an agreement between the  
 25-9 retail public utility and the certificate holder or a person who  
 25-10 possesses facilities used to provide utility service or under a  
 25-11 utility commission-ordered arrangement between the two service  
 25-12 providers;

25-13 (3) nonuse; or

25-14 (4) other similar reasons in the usual course of  
 25-15 business.

25-16 (c) Any discontinuance, reduction, or impairment of  
 25-17 service, whether with or without approval of the utility  
 25-18 commission, shall be in conformity with and subject to conditions,  
 25-19 restrictions, and limitations that the utility commission  
 25-20 prescribes.

25-21 (e) Not later than the 48th hour after the hour in which a  
 25-22 utility files a bankruptcy petition, the utility shall report this  
 25-23 fact to the utility commission and the commission in writing.

25-24 SECTION 49. Subsection (d), Section 13.2502, Water Code, is  
 25-25 amended to read as follows:

25-26 (d) This section does not limit or extend the jurisdiction  
 25-27 of the utility commission under Section 13.043(g).

25-28 SECTION 50. Section 13.251, Water Code, is amended to read  
 25-29 as follows:

25-30 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.  
 25-31 Except as provided by Section 13.255 [~~of this code~~], a utility or a  
 25-32 water supply or sewer service corporation may not sell, assign, or  
 25-33 lease a certificate of public convenience and necessity or any  
 25-34 right obtained under a certificate unless the commission has  
 25-35 determined that the purchaser, assignee, or lessee is capable of  
 25-36 rendering adequate and continuous service to every consumer within  
 25-37 the certified area, after considering the factors under Section  
 25-38 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be  
 25-39 on the conditions prescribed by the utility commission.

25-40 SECTION 51. Section 13.252, Water Code, is amended to read  
 25-41 as follows:

25-42 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.  
 25-43 If a retail public utility in constructing or extending a line,  
 25-44 plant, or system interferes or attempts to interfere with the  
 25-45 operation of a line, plant, or system of any other retail public  
 25-46 utility, or furnishes, makes available, renders, or extends retail  
 25-47 water or sewer utility service to any portion of the service area of  
 25-48 another retail public utility that has been granted or is not  
 25-49 required to possess a certificate of public convenience and  
 25-50 necessity, the utility commission may issue an order prohibiting  
 25-51 the construction, extension, or provision of service or prescribing  
 25-52 terms and conditions for locating the line, plant, or system  
 25-53 affected or for the provision of the service.

25-54 SECTION 52. Section 13.253, Water Code, is amended to read  
 25-55 as follows:

25-56 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING  
 25-57 SERVICE. (a) After notice and hearing, the utility commission or  
 25-58 the commission may:

25-59 (1) order any retail public utility that is required  
 25-60 by law to possess a certificate of public convenience and necessity  
 25-61 or any retail public utility that possesses a certificate of public  
 25-62 convenience and necessity and is located in an affected county as  
 25-63 defined in Section 16.341 to:

25-64 (A) provide specified improvements in its  
 25-65 service in a defined area if service in that area is inadequate or  
 25-66 is substantially inferior to service in a comparable area and it is  
 25-67 reasonable to require the retail public utility to provide the  
 25-68 improved service; or

25-69 (B) develop, implement, and follow financial,

26-1 managerial, and technical practices that are acceptable to the  
 26-2 utility commission to ensure that continuous and adequate service  
 26-3 is provided to any areas currently certificated to the retail  
 26-4 public utility if the retail public utility has not provided  
 26-5 continuous and adequate service to any of those areas and, for a  
 26-6 utility, to provide financial assurance of the utility's ability to  
 26-7 operate the system in accordance with applicable laws and rules, in  
 26-8 the form of a bond or other financial assurance in a form and amount  
 26-9 specified by the utility commission;

26-10 (2) order two or more public utilities or water supply  
 26-11 or sewer service corporations to establish specified facilities for  
 26-12 interconnecting service;

26-13 (3) order a public utility or water supply or sewer  
 26-14 service corporation that has not demonstrated that it can provide  
 26-15 continuous and adequate service from its drinking water source or  
 26-16 sewer treatment facility to obtain service sufficient to meet its  
 26-17 obligation to provide continuous and adequate service on at least a  
 26-18 wholesale basis from another consenting utility service provider;  
 26-19 or

26-20 (4) issue an emergency order, with or without a  
 26-21 hearing, under Section 13.041.

26-22 (b) If the utility commission has reason to believe that  
 26-23 improvements and repairs to a water or sewer service system are  
 26-24 necessary to enable a retail public utility to provide continuous  
 26-25 and adequate service in any portion of its service area and the  
 26-26 retail public utility has provided financial assurance under  
 26-27 Section 341.0355, Health and Safety Code, or under this chapter,  
 26-28 the utility commission, after providing to the retail public  
 26-29 utility notice and an opportunity to be heard by the commissioners  
 26-30 at a [~~commission~~] meeting of the utility commission, may  
 26-31 immediately order specified improvements and repairs to the water  
 26-32 or sewer system, the costs of which may be paid by the bond or other  
 26-33 financial assurance in an amount determined by the utility  
 26-34 commission not to exceed the amount of the bond or financial  
 26-35 assurance. The order requiring the improvements may be an  
 26-36 emergency order if it is issued after the retail public utility has  
 26-37 had an opportunity to be heard [~~by the commissioners~~] at a  
 26-38 [~~commission~~] meeting of the utility commission. After notice and  
 26-39 hearing, the utility commission may require a retail public utility  
 26-40 to obligate additional money to replace the financial assurance  
 26-41 used for the improvements.

26-42 SECTION 53. Subsections (a), (a-1), (a-2), (a-3), (a-4),  
 26-43 (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Section  
 26-44 13.254, Water Code, are amended to read as follows:

26-45 (a) The utility commission at any time after notice and  
 26-46 hearing may revoke or amend any certificate of public convenience  
 26-47 and necessity with the written consent of the certificate holder or  
 26-48 if the utility commission [~~it~~] finds that:

26-49 (1) the certificate holder has never provided, is no  
 26-50 longer providing, is incapable of providing, or has failed to  
 26-51 provide continuous and adequate service in the area, or part of the  
 26-52 area, covered by the certificate;

26-53 (2) in an affected county as defined in Section  
 26-54 16.341, the cost of providing service by the certificate holder is  
 26-55 so prohibitively expensive as to constitute denial of service,  
 26-56 provided that, for commercial developments or for residential  
 26-57 developments started after September 1, 1997, in an affected county  
 26-58 as defined in Section 16.341, the fact that the cost of obtaining  
 26-59 service from the currently certificated retail public utility makes  
 26-60 the development economically unfeasible does not render such cost  
 26-61 prohibitively expensive in the absence of other relevant factors;

26-62 (3) the certificate holder has agreed in writing to  
 26-63 allow another retail public utility to provide service within its  
 26-64 service area, except for an interim period, without amending its  
 26-65 certificate; or

26-66 (4) the certificate holder has failed to file a cease  
 26-67 and desist action pursuant to Section 13.252 within 180 days of the  
 26-68 date that it became aware that another retail public utility was  
 26-69 providing service within its service area, unless the certificate

27-1 holder demonstrates good cause for its failure to file such action  
27-2 within the 180 days.

27-3 (a-1) As an alternative to decertification under Subsection  
27-4 (a), the owner of a tract of land that is at least 50 acres and that  
27-5 is not in a platted subdivision actually receiving water or sewer  
27-6 service may petition the utility commission under this subsection  
27-7 for expedited release of the area from a certificate of public  
27-8 convenience and necessity so that the area may receive service from  
27-9 another retail public utility. The fact that a certificate holder  
27-10 is a borrower under a federal loan program is not a bar to a request  
27-11 under this subsection for the release of the petitioner's land and  
27-12 the receipt of services from an alternative provider. On the day  
27-13 the petitioner submits the petition to the utility commission, the  
27-14 petitioner shall send, via certified mail, a copy of the petition to  
27-15 the certificate holder, who may submit information to the utility  
27-16 commission to controvert information submitted by the petitioner.  
27-17 The petitioner must demonstrate that:

27-18 (1) a written request for service, other than a  
27-19 request for standard residential or commercial service, has been  
27-20 submitted to the certificate holder, identifying:

27-21 (A) the area for which service is sought;

27-22 (B) the timeframe within which service is needed  
27-23 for current and projected service demands in the area;

27-24 (C) the level and manner of service needed for  
27-25 current and projected service demands in the area;

27-26 (D) the approximate cost for the alternative  
27-27 provider to provide the service at the same level and manner that is  
27-28 requested from the certificate holder;

27-29 (E) the flow and pressure requirements and  
27-30 specific infrastructure needs, including line size and system  
27-31 capacity for the required level of fire protection requested; and

27-32 (F) any additional information requested by the  
27-33 certificate holder that is reasonably related to determination of  
27-34 the capacity or cost for providing the service;

27-35 (2) the certificate holder has been allowed at least  
27-36 90 calendar days to review and respond to the written request and  
27-37 the information it contains;

27-38 (3) the certificate holder:

27-39 (A) has refused to provide the service;

27-40 (B) is not capable of providing the service on a  
27-41 continuous and adequate basis within the timeframe, at the level,  
27-42 at the approximate cost that the alternative provider is capable of  
27-43 providing for a comparable level of service, or in the manner  
27-44 reasonably needed or requested by current and projected service  
27-45 demands in the area; or

27-46 (C) conditions the provision of service on the  
27-47 payment of costs not properly allocable directly to the  
27-48 petitioner's service request, as determined by the utility  
27-49 commission; and

27-50 (4) the alternate retail public utility from which the  
27-51 petitioner will be requesting service possesses the financial,  
27-52 managerial, and technical capability to provide continuous and  
27-53 adequate service within the timeframe, at the level, at the cost,  
27-54 and in the manner reasonably needed or requested by current and  
27-55 projected service demands in the area.

27-56 (a-2) A landowner is not entitled to make the election  
27-57 described in Subsection (a-1) or (a-5) but is entitled to contest  
27-58 under Subsection (a) the involuntary certification of its property  
27-59 in a hearing held by the utility commission if the landowner's  
27-60 property is located:

27-61 (1) within the boundaries of any municipality or the  
27-62 extraterritorial jurisdiction of a municipality with a population  
27-63 of more than 500,000 and the municipality or retail public utility  
27-64 owned by the municipality is the holder of the certificate; or

27-65 (2) in a platted subdivision actually receiving water  
27-66 or sewer service.

27-67 (a-3) Within 60 calendar days from the date the utility  
27-68 commission determines the petition filed pursuant to Subsection  
27-69 (a-1) to be administratively complete, the utility commission shall

28-1 grant the petition unless the utility commission makes an express  
 28-2 finding that the petitioner failed to satisfy the elements required  
 28-3 in Subsection (a-1) and supports its finding with separate findings  
 28-4 and conclusions for each element based solely on the information  
 28-5 provided by the petitioner and the certificate holder. The utility  
 28-6 commission may grant or deny a petition subject to terms and  
 28-7 conditions specifically related to the service request of the  
 28-8 petitioner and all relevant information submitted by the petitioner  
 28-9 and the certificate holder. In addition, the utility commission  
 28-10 may require an award of compensation as otherwise provided by this  
 28-11 section.

28-12 (a-4) Chapter 2001, Government Code, does not apply to any  
 28-13 petition filed under Subsection (a-1). The decision of the utility  
 28-14 commission on the petition is final after any reconsideration  
 28-15 authorized by the utility commission's rules and may not be  
 28-16 appealed.

28-17 (a-6) The utility commission shall grant a petition  
 28-18 received under Subsection (a-5) not later than the 60th day after  
 28-19 the date the landowner files the petition. The utility commission  
 28-20 may not deny a petition received under Subsection (a-5) based on the  
 28-21 fact that a certificate holder is a borrower under a federal loan  
 28-22 program. The utility commission may require an award of  
 28-23 compensation by the petitioner to a decertified retail public  
 28-24 utility that is the subject of a petition filed under Subsection  
 28-25 (a-5) as otherwise provided by this section.

28-26 (a-8) If a certificate holder has never made service  
 28-27 available through planning, design, construction of facilities, or  
 28-28 contractual obligations to serve the area a petitioner seeks to  
 28-29 have released under Subsection (a-1), the utility commission is not  
 28-30 required to find that the proposed alternative provider is capable  
 28-31 of providing better service than the certificate holder, but only  
 28-32 that the proposed alternative provider is capable of providing the  
 28-33 requested service.

28-34 (b) Upon written request from the certificate holder, the  
 28-35 utility commission [~~executive director~~] may cancel the certificate  
 28-36 of a utility or water supply corporation authorized by rule to  
 28-37 operate without a certificate of public convenience and necessity  
 28-38 under Section 13.242(c).

28-39 (c) If the certificate of any retail public utility is  
 28-40 revoked or amended, the utility commission may require one or more  
 28-41 retail public utilities with their consent to provide service in  
 28-42 the area in question. The order of the utility commission shall not  
 28-43 be effective to transfer property.

28-44 (d) A retail public utility may not in any way render retail  
 28-45 water or sewer service directly or indirectly to the public in an  
 28-46 area that has been decertified under this section without providing  
 28-47 compensation for any property that the utility commission  
 28-48 determines is rendered useless or valueless to the decertified  
 28-49 retail public utility as a result of the decertification.

28-50 (e) The determination of the monetary amount of  
 28-51 compensation, if any, shall be determined at the time another  
 28-52 retail public utility seeks to provide service in the previously  
 28-53 decertified area and before service is actually provided. The  
 28-54 utility commission shall ensure that the monetary amount of  
 28-55 compensation is determined not later than the 90th calendar day  
 28-56 after the date on which a retail public utility notifies the utility  
 28-57 commission of its intent to provide service to the decertified  
 28-58 area.

28-59 (f) The monetary amount shall be determined by a qualified  
 28-60 individual or firm serving as independent appraiser agreed upon by  
 28-61 the decertified retail public utility and the retail public utility  
 28-62 seeking to serve the area. The determination of compensation by the  
 28-63 independent appraiser shall be binding on the utility commission.  
 28-64 The costs of the independent appraiser shall be borne by the retail  
 28-65 public utility seeking to serve the area.

28-66 (g) For the purpose of implementing this section, the value  
 28-67 of real property owned and utilized by the retail public utility for  
 28-68 its facilities shall be determined according to the standards set  
 28-69 forth in Chapter 21, Property Code, governing actions in eminent

29-1 domain and the value of personal property shall be determined  
 29-2 according to the factors in this subsection. The factors ensuring  
 29-3 that the compensation to a retail public utility is just and  
 29-4 adequate shall include: the amount of the retail public utility's  
 29-5 debt allocable for service to the area in question; the value of the  
 29-6 service facilities of the retail public utility located within the  
 29-7 area in question; the amount of any expenditures for planning,  
 29-8 design, or construction of service facilities that are allocable to  
 29-9 service to the area in question; the amount of the retail public  
 29-10 utility's contractual obligations allocable to the area in  
 29-11 question; any demonstrated impairment of service or increase of  
 29-12 cost to consumers of the retail public utility remaining after the  
 29-13 decertification; the impact on future revenues lost from existing  
 29-14 customers; necessary and reasonable legal expenses and  
 29-15 professional fees; and other relevant factors. The utility  
 29-16 commission shall adopt rules governing the evaluation of these  
 29-17 factors.

29-18 (g-1) If the retail public utilities cannot agree on an  
 29-19 independent appraiser within 10 calendar days after the date on  
 29-20 which the retail public utility notifies the utility commission of  
 29-21 its intent to provide service to the decertified area, each retail  
 29-22 public utility shall engage its own appraiser at its own expense,  
 29-23 and each appraisal shall be submitted to the utility commission  
 29-24 within 60 calendar days. After receiving the appraisals, the  
 29-25 utility commission shall appoint a third appraiser who shall make a  
 29-26 determination of the compensation within 30 days. The  
 29-27 determination may not be less than the lower appraisal or more than  
 29-28 the higher appraisal. Each retail public utility shall pay half the  
 29-29 cost of the third appraisal.

29-30 (h) A certificate holder that has land removed from its  
 29-31 certificated service area in accordance with this section may not  
 29-32 be required, after the land is removed, to provide service to the  
 29-33 removed land for any reason, including the violation of law or  
 29-34 utility commission or commission rules by a water or sewer system of  
 29-35 another person.

29-36 SECTION 54. Subsections (a), (b), (c), (d), (e), (g-1),  
 29-37 (k), (l), and (m), Section 13.255, Water Code, are amended to read  
 29-38 as follows:

29-39 (a) In the event that an area is incorporated or annexed by a  
 29-40 municipality, either before or after the effective date of this  
 29-41 section, the municipality and a retail public utility that provides  
 29-42 water or sewer service to all or part of the area pursuant to a  
 29-43 certificate of convenience and necessity may agree in writing that  
 29-44 all or part of the area may be served by a municipally owned  
 29-45 utility, by a franchised utility, or by the retail public utility.  
 29-46 In this section, the phrase "franchised utility" shall mean a  
 29-47 retail public utility that has been granted a franchise by a  
 29-48 municipality to provide water or sewer service inside municipal  
 29-49 boundaries. The agreement may provide for single or dual  
 29-50 certification of all or part of the area, for the purchase of  
 29-51 facilities or property, and for such other or additional terms that  
 29-52 the parties may agree on. If a franchised utility is to serve the  
 29-53 area, the franchised utility shall also be a party to the agreement.  
 29-54 The executed agreement shall be filed with the utility commission,  
 29-55 and the utility commission, on receipt of the agreement, shall  
 29-56 incorporate the terms of the agreement into the respective  
 29-57 certificates of convenience and necessity of the parties to the  
 29-58 agreement.

29-59 (b) If an agreement is not executed within 180 days after  
 29-60 the municipality, in writing, notifies the retail public utility of  
 29-61 its intent to provide service to the incorporated or annexed area,  
 29-62 and if the municipality desires and intends to provide retail  
 29-63 utility service to the area, the municipality, prior to providing  
 29-64 service to the area, shall file an application with the utility  
 29-65 commission to grant single certification to the municipally owned  
 29-66 water or sewer utility or to a franchised utility. If an  
 29-67 application for single certification is filed, the utility  
 29-68 commission shall fix a time and place for a hearing and give notice  
 29-69 of the hearing to the municipality and franchised utility, if any,

30-1 and notice of the application and hearing to the retail public  
30-2 utility.

30-3 (c) The utility commission shall grant single certification  
30-4 to the municipality. The utility commission shall also determine  
30-5 whether single certification as requested by the municipality would  
30-6 result in property of a retail public utility being rendered  
30-7 useless or valueless to the retail public utility, and shall  
30-8 determine in its order the monetary amount that is adequate and just  
30-9 to compensate the retail public utility for such property. If the  
30-10 municipality in its application has requested the transfer of  
30-11 specified property of the retail public utility to the municipality  
30-12 or to a franchised utility, the utility commission shall also  
30-13 determine in its order the adequate and just compensation to be paid  
30-14 for such property pursuant to the provisions of this section,  
30-15 including an award for damages to property remaining in the  
30-16 ownership of the retail public utility after single certification.  
30-17 The order of the utility commission shall not be effective to  
30-18 transfer property. A transfer of property may only be obtained  
30-19 under this section by a court judgment rendered pursuant to  
30-20 Subsection (d) or (e) [~~of this section~~]. The grant of single  
30-21 certification by the utility commission shall go into effect on the  
30-22 date the municipality or franchised utility, as the case may be,  
30-23 pays adequate and just compensation pursuant to court order, or  
30-24 pays an amount into the registry of the court or to the retail  
30-25 public utility under Subsection (f). If the court judgment  
30-26 provides that the retail public utility is not entitled to any  
30-27 compensation, the grant of single certification shall go into  
30-28 effect when the court judgment becomes final. The municipality or  
30-29 franchised utility must provide to each customer of the retail  
30-30 public utility being acquired an individual written notice within  
30-31 60 days after the effective date for the transfer specified in the  
30-32 court judgment. The notice must clearly advise the customer of the  
30-33 identity of the new service provider, the reason for the transfer,  
30-34 the rates to be charged by the new service provider, and the  
30-35 effective date of those rates.

30-36 (d) In the event the final order of the utility commission  
30-37 is not appealed within 30 days, the municipality may request the  
30-38 district court of Travis County to enter a judgment consistent with  
30-39 the order of the utility commission. In such event, the court shall  
30-40 render a judgment that:

30-41 (1) transfers to the municipally owned utility or  
30-42 franchised utility title to property to be transferred to the  
30-43 municipally owned utility or franchised utility as delineated by  
30-44 the utility commission's final order and property determined by the  
30-45 utility commission to be rendered useless or valueless by the  
30-46 granting of single certification; and

30-47 (2) orders payment to the retail public utility of  
30-48 adequate and just compensation for the property as determined by  
30-49 the utility commission in its final order.

30-50 (e) Any party that is aggrieved by a final order of the  
30-51 utility commission under this section may file an appeal with the  
30-52 district court of Travis County within 30 days after the order  
30-53 becomes final. The hearing in such an appeal before the district  
30-54 court shall be by trial de novo on all issues. After the hearing, if  
30-55 the court determines that the municipally owned utility or  
30-56 franchised utility is entitled to single certification under the  
30-57 provisions of this section, the court shall enter a judgment that:

30-58 (1) transfers to the municipally owned utility or  
30-59 franchised utility title to property requested by the municipality  
30-60 to be transferred to the municipally owned utility or franchised  
30-61 utility and located within the singly certificated area and  
30-62 property determined by the court or jury to be rendered useless or  
30-63 valueless by the granting of single certification; and

30-64 (2) orders payment in accordance with Subsection (g)  
30-65 [~~of this section~~] to the retail public utility of adequate and just  
30-66 compensation for the property transferred and for the property  
30-67 damaged as determined by the court or jury.

30-68 (g-1) The utility commission shall adopt rules governing  
30-69 the evaluation of the factors to be considered in determining the

31-1 monetary compensation under Subsection (g). The utility commission  
 31-2 by rule shall adopt procedures to ensure that the total  
 31-3 compensation to be paid to a retail public utility under Subsection  
 31-4 (g) is determined not later than the 90th calendar day after the  
 31-5 date on which the utility commission determines that the  
 31-6 municipality's application is administratively complete.

31-7 (k) The following conditions apply when a municipality or  
 31-8 franchised utility makes an application to acquire the service area  
 31-9 or facilities of a retail public utility described in Subsection  
 31-10 (j)(2):

31-11 (1) the utility commission or court must determine  
 31-12 that the service provided by the retail public utility is  
 31-13 substandard or its rates are unreasonable in view of the reasonable  
 31-14 expenses of the utility;

31-15 (2) if the municipality abandons its application, the  
 31-16 court or the utility commission is authorized to award to the retail  
 31-17 public utility its reasonable expenses related to the proceeding  
 31-18 hereunder, including attorney fees; and

31-19 (3) unless otherwise agreed by the retail public  
 31-20 utility, the municipality must take the entire utility property of  
 31-21 the retail public utility in a proceeding hereunder.

31-22 (l) For an area incorporated by a municipality, the  
 31-23 compensation provided under Subsection (g) shall be determined by a  
 31-24 qualified individual or firm to serve as independent appraiser, who  
 31-25 shall be selected by the affected retail public utility, and the  
 31-26 costs of the appraiser shall be paid by the municipality. For an  
 31-27 area annexed by a municipality, the compensation provided under  
 31-28 Subsection (g) shall be determined by a qualified individual or  
 31-29 firm to which the municipality and the retail public utility agree  
 31-30 to serve as independent appraiser. If the retail public utility and  
 31-31 the municipality are unable to agree on a single individual or firm  
 31-32 to serve as the independent appraiser before the 11th day after the  
 31-33 date the retail public utility or municipality notifies the other  
 31-34 party of the impasse, the retail public utility and municipality  
 31-35 each shall appoint a qualified individual or firm to serve as  
 31-36 independent appraiser. On or before the 10th business day after the  
 31-37 date of their appointment, the independent appraisers shall meet to  
 31-38 reach an agreed determination of the amount of compensation. If the  
 31-39 appraisers are unable to agree on a determination before the 16th  
 31-40 business day after the date of their first meeting under this  
 31-41 subsection, the retail public utility or municipality may petition  
 31-42 the utility commission or a person the utility commission  
 31-43 designates for the purpose to appoint a third qualified independent  
 31-44 appraiser to reconcile the appraisals of the two originally  
 31-45 appointed appraisers. The determination of the third appraiser may  
 31-46 not be less than the lesser or more than the greater of the two  
 31-47 original appraisals. The costs of the independent appraisers for  
 31-48 an annexed area shall be shared equally by the retail public utility  
 31-49 and the municipality. The determination of compensation under this  
 31-50 subsection is binding on the utility commission.

31-51 (m) The utility commission shall deny an application for  
 31-52 single certification by a municipality that fails to demonstrate  
 31-53 compliance with the commission's minimum requirements for public  
 31-54 drinking water systems.

31-55 SECTION 55. Section 13.2551, Water Code, is amended to read  
 31-56 as follows:

31-57 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a  
 31-58 condition to decertification or single certification under Section  
 31-59 13.254 or 13.255, and on request by an affected retail public  
 31-60 utility, the utility commission may order:

31-61 (1) the retail public utility seeking to provide  
 31-62 service to a decertified area to serve the entire service area of  
 31-63 the retail public utility that is being decertified; and

31-64 (2) the transfer of the entire certificate of public  
 31-65 convenience and necessity of a partially decertified retail public  
 31-66 utility to the retail public utility seeking to provide service to  
 31-67 the decertified area.

31-68 (b) The utility commission shall order service to the entire  
 31-69 area under Subsection (a) if the utility commission finds that the

32-1 decertified retail public utility will be unable to provide  
 32-2 continuous and adequate service at an affordable cost to the  
 32-3 remaining customers.

32-4 (c) The utility commission shall require the retail public  
 32-5 utility seeking to provide service to the decertified area to  
 32-6 provide continuous and adequate service to the remaining customers  
 32-7 at a cost comparable to the cost of that service to its other  
 32-8 customers and shall establish the terms under which the service  
 32-9 must be provided. The terms may include:

32-10 (1) transferring debt and other contract obligations;  
 32-11 (2) transferring real and personal property;  
 32-12 (3) establishing interim service rates for affected  
 32-13 customers during specified times; and

32-14 (4) other provisions necessary for the just and  
 32-15 reasonable allocation of assets and liabilities.

32-16 (d) The retail public utility seeking decertification shall  
 32-17 not charge the affected customers any transfer fee or other fee to  
 32-18 obtain service other than the retail public utility's usual and  
 32-19 customary rates for monthly service or the interim rates set by the  
 32-20 utility commission, if applicable.

32-21 (e) The utility commission shall not order compensation to  
 32-22 the decertificatēd retail utility if service to the entire service  
 32-23 area is ordered under this section.

32-24 SECTION 56. Subsections (e), (i), (r), and (s), Section  
 32-25 13.257, Water Code, are amended to read as follows:

32-26 (e) The notice must be given to the prospective purchaser  
 32-27 before the execution of a binding contract of purchase and sale.  
 32-28 The notice may be given separately or as an addendum to or paragraph  
 32-29 of the contract. If the seller fails to provide the notice required  
 32-30 by this section, the purchaser may terminate the contract. If the  
 32-31 seller provides the notice at or before the closing of the purchase  
 32-32 and sale contract and the purchaser elects to close even though the  
 32-33 notice was not timely provided before the execution of the  
 32-34 contract, it is conclusively presumed that the purchaser has waived  
 32-35 all rights to terminate the contract and recover damages or pursue  
 32-36 other remedies or rights under this section. Notwithstanding any  
 32-37 provision of this section to the contrary, a seller, title  
 32-38 insurance company, real estate broker, or examining attorney, or an  
 32-39 agent, representative, or person acting on behalf of the seller,  
 32-40 company, broker, or attorney, is not liable for damages under  
 32-41 Subsection (m) or (n) or liable for any other damages to any person  
 32-42 for:

32-43 (1) failing to provide the notice required by this  
 32-44 section to a purchaser before the execution of a binding contract of  
 32-45 purchase and sale or at or before the closing of the purchase and  
 32-46 sale contract if:

32-47 (A) the utility service provider did not file the  
 32-48 map of the certificated service area in the real property records of  
 32-49 the county in which the service area is located and with the utility  
 32-50 commission depicting the boundaries of the service area of the  
 32-51 utility service provider as shown in the real property records of  
 32-52 the county in which the service area is located; and

32-53 (B) the utility commission did not maintain an  
 32-54 accurate map of the certificated service area of the utility  
 32-55 service provider as required by this chapter; or

32-56 (2) unintentionally providing a notice required by  
 32-57 this section that is incorrect under the circumstances before the  
 32-58 execution of a binding contract of purchase and sale or at or before  
 32-59 the closing of the purchase and sale contract.

32-60 (i) If the notice is given at closing as provided by  
 32-61 Subsection (g), a purchaser, or the purchaser's heirs, successors,  
 32-62 or assigns, may not maintain an action for damages or maintain an  
 32-63 action against a seller, title insurance company, real estate  
 32-64 broker, or lienholder, or any agent, representative, or person  
 32-65 acting on behalf of the seller, company, broker, or lienholder, by  
 32-66 reason of the seller's use of the information filed with the utility  
 32-67 commission by the utility service provider or the seller's use of  
 32-68 the map of the certificated service area of the utility service  
 32-69 provider filed in the real property records to determine whether



33-1 the property to be purchased is within the certificated service  
 33-2 area of the utility service provider. An action may not be  
 33-3 maintained against a title insurance company for the failure to  
 33-4 disclose that the described real property is included within the  
 33-5 certificated service area of a utility service provider if the  
 33-6 utility service provider did not file in the real property records  
 33-7 or with the utility commission the map of the certificated service  
 33-8 area.

33-9 (r) A utility service provider shall:

33-10 (1) record in the real property records of each county  
 33-11 in which the service area or a portion of the service area is  
 33-12 located a certified copy of the map of the certificate of public  
 33-13 convenience and necessity and of any amendment to the certificate  
 33-14 as contained in the utility commission's records, and a boundary  
 33-15 description of the service area by:

33-16 (A) a metes and bounds survey certified by a  
 33-17 licensed state land surveyor or a registered professional land  
 33-18 surveyor;

33-19 (B) the Texas State Plane Coordinate System;

33-20 (C) verifiable landmarks, including a road,  
 33-21 creek, or railroad line; or

33-22 (D) if a recorded plat of the area exists, lot and  
 33-23 block number; and

33-24 (2) submit to the utility commission [~~executive~~  
 33-25 ~~director~~] evidence of the recording.

33-26 (s) Each county shall accept and file in its real property  
 33-27 records a utility service provider's map presented to the county  
 33-28 clerk under this section if the map meets filing requirements, does  
 33-29 not exceed 11 inches by 17 inches in size, and is accompanied by the  
 33-30 appropriate fee. The recording required by this section must be  
 33-31 completed not later than the 31st day after the date a utility  
 33-32 service provider receives a final order from the utility commission  
 33-33 granting an application for a new certificate or for an amendment to  
 33-34 a certificate that results in a change in the utility service  
 33-35 provider's service area.

33-36 SECTION 57. Subsections (a), (b), (c), (d), (e), (f), and  
 33-37 (g), Section 13.301, Water Code, are amended to read as follows:

33-38 (a) A utility or a water supply or sewer service  
 33-39 corporation, on or before the 120th day before the effective date of  
 33-40 a sale, acquisition, lease, or rental of a water or sewer system  
 33-41 that is required by law to possess a certificate of public  
 33-42 convenience and necessity or the effective date of a merger or  
 33-43 consolidation with such a utility or water supply or sewer service  
 33-44 corporation, shall:

33-45 (1) file a written application with the utility  
 33-46 commission; and

33-47 (2) unless public notice is waived by the utility  
 33-48 commission [~~executive director~~] for good cause shown, give public  
 33-49 notice of the action.

33-50 (b) The utility commission may require that the person  
 33-51 purchasing or acquiring the water or sewer system demonstrate  
 33-52 adequate financial, managerial, and technical capability for  
 33-53 providing continuous and adequate service to the requested area and  
 33-54 any areas currently certificated to the person.

33-55 (c) If the person purchasing or acquiring the water or sewer  
 33-56 system cannot demonstrate adequate financial capability, the  
 33-57 utility commission may require that the person provide a bond or  
 33-58 other financial assurance in a form and amount specified by the  
 33-59 utility commission to ensure continuous and adequate utility  
 33-60 service is provided.

33-61 (d) The utility commission shall, with or without a public  
 33-62 hearing, investigate the sale, acquisition, lease, or rental to  
 33-63 determine whether the transaction will serve the public interest.

33-64 (e) Before the expiration of the 120-day notification  
 33-65 period, the utility commission [~~executive director~~] shall notify  
 33-66 all known parties to the transaction and the Office of Public  
 33-67 Utility Counsel whether [~~of~~] the utility commission will [~~executive~~  
 33-68 ~~director's decision whether to request that the commission~~] hold a  
 33-69 public hearing to determine if the transaction will serve the

34-1 public interest. The utility commission may hold ~~[executive~~  
 34-2 ~~director may request]~~ a hearing if:

34-3 (1) the application filed with the utility commission  
 34-4 or the public notice was improper;

34-5 (2) the person purchasing or acquiring the water or  
 34-6 sewer system has not demonstrated adequate financial, managerial,  
 34-7 and technical capability for providing continuous and adequate  
 34-8 service to the service area being acquired and to any areas  
 34-9 currently certificated to the person;

34-10 (3) the person or an affiliated interest of the person  
 34-11 purchasing or acquiring the water or sewer system has a history of:

34-12 (A) noncompliance with the requirements of the  
 34-13 utility commission, the commission, or the ~~[Texas]~~ Department of  
 34-14 State Health Services; or

34-15 (B) continuing mismanagement or misuse of  
 34-16 revenues as a utility service provider;

34-17 (4) the person purchasing or acquiring the water or  
 34-18 sewer system cannot demonstrate the financial ability to provide  
 34-19 the necessary capital investment to ensure the provision of  
 34-20 continuous and adequate service to the customers of the water or  
 34-21 sewer system; or

34-22 (5) there are concerns that the transaction may not  
 34-23 serve the public interest, after the application of the  
 34-24 considerations provided by Section 13.246(c) for determining  
 34-25 whether to grant a certificate of convenience and necessity.

34-26 (f) Unless the utility commission holds ~~[executive director~~  
 34-27 ~~requests that]~~ a public hearing ~~[be held]~~, the sale, acquisition,  
 34-28 lease, or rental may be completed as proposed:

34-29 (1) at the end of the 120-day period; or

34-30 (2) at any time after the utility commission  
 34-31 ~~[executive director]~~ notifies the utility or water supply or sewer  
 34-32 service corporation that a hearing will not be held ~~[requested]~~.

34-33 (g) If the utility commission decides to hold a hearing ~~[is~~  
 34-34 ~~requested]~~ or if the utility or water supply or sewer service  
 34-35 corporation fails to make the application as required or to provide  
 34-36 public notice, the sale, acquisition, lease, or rental may not be  
 34-37 completed unless the utility commission determines that the  
 34-38 proposed transaction serves the public interest.

34-39 SECTION 58. Section 13.302, Water Code, is amended to read  
 34-40 as follows:

34-41 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC  
 34-42 UTILITY: REPORT. (a) A utility may not purchase voting stock in  
 34-43 another utility doing business in this state and a person may not  
 34-44 acquire a controlling interest in a utility doing business in this  
 34-45 state unless the person or utility files a written application with  
 34-46 the utility commission not later than the 61st day before the date  
 34-47 on which the transaction is to occur.

34-48 (b) The utility commission may require that a person  
 34-49 acquiring a controlling interest in a utility demonstrate adequate  
 34-50 financial, managerial, and technical capability for providing  
 34-51 continuous and adequate service to the requested area and any areas  
 34-52 currently certificated to the person.

34-53 (c) If the person acquiring a controlling interest cannot  
 34-54 demonstrate adequate financial capability, the utility commission  
 34-55 may require that the person provide a bond or other financial  
 34-56 assurance in a form and amount specified by the utility commission  
 34-57 to ensure continuous and adequate utility service is provided.

34-58 (d) The utility commission ~~[executive director]~~ may  
 34-59 ~~[request that the commission]~~ hold a public hearing on the  
 34-60 transaction if the utility commission ~~[executive director]~~  
 34-61 believes that a criterion prescribed by Section 13.301(e) applies.

34-62 (e) Unless the utility commission holds ~~[executive director~~  
 34-63 ~~requests that]~~ a public hearing ~~[be held]~~, the purchase or  
 34-64 acquisition may be completed as proposed:

34-65 (1) at the end of the 60-day period; or

34-66 (2) at any time after the utility commission  
 34-67 ~~[executive director]~~ notifies the person or utility that a hearing  
 34-68 will not be held ~~[requested]~~.

34-69 (f) If the utility commission decides to hold a hearing ~~[is~~

35-1 ~~requested~~] or if the person or utility fails to make the application  
 35-2 to the utility commission as required, the purchase or acquisition  
 35-3 may not be completed unless the utility commission determines that  
 35-4 the proposed transaction serves the public interest. A purchase or  
 35-5 acquisition that is not completed in accordance with the provisions  
 35-6 of this section is void.

35-7 SECTION 59. Section 13.303, Water Code, is amended to read  
 35-8 as follows:

35-9 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may  
 35-10 not loan money, stocks, bonds, notes, or other evidences of  
 35-11 indebtedness to any corporation or person owning or holding  
 35-12 directly or indirectly any stock of the utility unless the utility  
 35-13 reports the transaction to the utility commission within 60 days  
 35-14 after the date of the transaction.

35-15 SECTION 60. Section 13.304, Water Code, is amended to read  
 35-16 as follows:

35-17 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that  
 35-18 receives notice that all or a portion of the utility's facilities or  
 35-19 property used to provide utility service are being posted for  
 35-20 foreclosure shall notify the utility commission and the commission  
 35-21 in writing of that fact not later than the 10th day after the date on  
 35-22 which the utility receives the notice.

35-23 (b) A financial institution that forecloses on a utility or  
 35-24 on any part of the utility's facilities or property that are used to  
 35-25 provide utility service is not required to provide the 120-day  
 35-26 notice prescribed by Section 13.301, but shall provide written  
 35-27 notice to the utility commission and the commission before the 30th  
 35-28 day preceding the date on which the foreclosure is completed.

35-29 (c) The financial institution may operate the utility for an  
 35-30 interim period prescribed by utility commission rule before  
 35-31 transferring or otherwise obtaining a certificate of convenience  
 35-32 and necessity. A financial institution that operates a utility  
 35-33 during an interim period under this subsection is subject to each  
 35-34 utility commission rule to which the utility was subject and in the  
 35-35 same manner.

35-36 SECTION 61. Section 13.341, Water Code, is amended to read  
 35-37 as follows:

35-38 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The  
 35-39 utility commission has jurisdiction over affiliated interests  
 35-40 having transactions with utilities under the jurisdiction of the  
 35-41 utility commission to the extent of access to all accounts and  
 35-42 records of those affiliated interests relating to such  
 35-43 transactions, including but in no way limited to accounts and  
 35-44 records of joint or general expenses, any portion of which may be  
 35-45 applicable to those transactions.

35-46 SECTION 62. Section 13.342, Water Code, is amended to read  
 35-47 as follows:

35-48 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING  
 35-49 SECURITIES. The utility commission may require the disclosure of  
 35-50 the identity and respective interests of every owner of any  
 35-51 substantial interest in the voting securities of any utility or its  
 35-52 affiliated interest. One percent or more is a substantial interest  
 35-53 within the meaning of this section.

35-54 SECTION 63. Subsection (a), Section 13.343, Water Code, is  
 35-55 amended to read as follows:

35-56 (a) The owner of a utility that supplies retail water  
 35-57 service may not contract to purchase from an affiliated supplier  
 35-58 wholesale water service for any of that owner's systems unless:

35-59 (1) the wholesale service is provided for not more  
 35-60 than 90 days to remedy an emergency condition, as defined by utility  
 35-61 commission or commission rule; or

35-62 (2) the utility commission [~~executive director~~]  
 35-63 determines that the utility cannot obtain wholesale water service  
 35-64 from another source at a lower cost than from the affiliate.

35-65 SECTION 64. Section 13.381, Water Code, is amended to read  
 35-66 as follows:

35-67 Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party  
 35-68 to a proceeding before the utility commission or the commission is  
 35-69 entitled to judicial review under the substantial evidence rule.

36-1 SECTION 65. Subsection (a), Section 13.382, Water Code, is  
36-2 amended to read as follows:

36-3 (a) Any party represented by counsel who alleges that  
36-4 existing rates are excessive or that rates prescribed by the  
36-5 utility commission are excessive and who is a prevailing party in  
36-6 proceedings for review of a utility commission order or decision  
36-7 may in the same action recover against the regulation fund  
36-8 reasonable fees for attorneys and expert witnesses and other costs  
36-9 incurred by him before the utility commission and the court. The  
36-10 amount of the attorney's fees shall be fixed by the court.

36-11 SECTION 66. Section 13.411, Water Code, is amended to read  
36-12 as follows:

36-13 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)  
36-14 If the utility commission or the commission has reason to believe  
36-15 that any retail public utility or any other person or corporation is  
36-16 engaged in or is about to engage in any act in violation of this  
36-17 chapter or of any order or rule of the utility commission or the  
36-18 commission entered or adopted under this chapter or that any retail  
36-19 public utility or any other person or corporation is failing to  
36-20 comply with this chapter or with any rule or order, the attorney  
36-21 general on request of the utility commission or the commission, in  
36-22 addition to any other remedies provided in this chapter, shall  
36-23 bring an action in a court of competent jurisdiction in the name of  
36-24 and on behalf of the utility commission or the commission against  
36-25 the retail public utility or other person or corporation to enjoin  
36-26 the commencement or continuation of any act or to require  
36-27 compliance with this chapter or the rule or order.

36-28 (b) If the utility commission or the executive director of  
36-29 the commission has reason to believe that the failure of the owner  
36-30 or operator of a water utility to properly operate, maintain, or  
36-31 provide adequate facilities presents an imminent threat to human  
36-32 health or safety, the utility commission or the executive director  
36-33 shall immediately:

36-34 (1) notify the utility's representative; and  
36-35 (2) initiate enforcement action consistent with:  
36-36 (A) this subchapter; and  
36-37 (B) procedural rules adopted by the utility  
36-38 commission or the commission.

36-39 SECTION 67. Section 13.4115, Water Code, is amended to read  
36-40 as follows:

36-41 Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER  
36-42 CHARGE; PENALTY. In regard to a customer complaint arising out of a  
36-43 charge made by a public utility, if the utility commission [~~the~~  
36-44 ~~executive director~~] finds that the utility has failed to make the  
36-45 proper adjustment to the customer's bill after the conclusion of  
36-46 the complaint process established by the utility commission, the  
36-47 utility commission may issue an order requiring the utility to make  
36-48 the adjustment. Failure to comply with the order within 30 days of  
36-49 receiving the order is a violation for which the utility commission  
36-50 may impose an administrative penalty under Section 13.4151.

36-51 SECTION 68. Subsections (a), (f), and (g), Section 13.412,  
36-52 Water Code, are amended to read as follows:

36-53 (a) At the request of the utility commission or the  
36-54 commission, the attorney general shall bring suit for the  
36-55 appointment of a receiver to collect the assets and carry on the  
36-56 business of a water or sewer utility that:

36-57 (1) has abandoned operation of its facilities;  
36-58 (2) informs the utility commission or the commission  
36-59 that the owner is abandoning the system;  
36-60 (3) violates a final order of the utility commission  
36-61 or the commission; or

36-62 (4) allows any property owned or controlled by it to be  
36-63 used in violation of a final order of the utility commission or the  
36-64 commission.

36-65 (f) For purposes of this section and Section 13.4132,  
36-66 abandonment may include but is not limited to:

36-67 (1) failure to pay a bill or obligation owed to a  
36-68 retail public utility or to an electric or gas utility with the  
36-69 result that the utility service provider has issued a notice of

37-1 discontinuance of necessary services;

37-2 (2) failure to provide appropriate water or wastewater  
37-3 treatment so that a potential health hazard results;

37-4 (3) failure to adequately maintain facilities,  
37-5 resulting in potential health hazards, extended outages, or  
37-6 repeated service interruptions;

37-7 (4) failure to provide customers adequate notice of a  
37-8 health hazard or potential health hazard;

37-9 (5) failure to secure an alternative available water  
37-10 supply during an outage;

37-11 (6) displaying a pattern of hostility toward or  
37-12 repeatedly failing to respond to the utility commission or the  
37-13 commission or the utility's customers; and

37-14 (7) failure to provide the utility commission or the  
37-15 commission with adequate information on how to contact the utility  
37-16 for normal business and emergency purposes.

37-17 (g) Notwithstanding Section 64.021, Civil Practice and  
37-18 Remedies Code, a receiver appointed under this section may seek  
37-19 [~~commission~~] approval from the utility commission and the  
37-20 commission to acquire the water or sewer utility's facilities and  
37-21 transfer the utility's certificate of convenience and necessity.  
37-22 The receiver must apply in accordance with Subchapter H.

37-23 SECTION 69. Section 13.413, Water Code, is amended to read  
37-24 as follows:

37-25 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The  
37-26 receiver may, subject to the approval of the court and after giving  
37-27 notice to all interested parties, sell or otherwise dispose of all  
37-28 or part of the real or personal property of a water or sewer utility  
37-29 against which a proceeding has been brought under this subchapter  
37-30 to pay the costs incurred in the operation of the receivership. The  
37-31 costs include:

37-32 (1) payment of fees to the receiver for his services;

37-33 (2) payment of fees to attorneys, accountants,  
37-34 engineers, or any other person or entity that provides goods or  
37-35 services necessary to the operation of the receivership; and

37-36 (3) payment of costs incurred in ensuring that any  
37-37 property owned or controlled by a water or sewer utility is not used  
37-38 in violation of a final order of the utility commission or the  
37-39 commission.

37-40 SECTION 70. Section 13.4131, Water Code, is amended to read  
37-41 as follows:

37-42 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The  
37-43 utility commission, after providing to the utility notice and an  
37-44 opportunity for a hearing, may place a utility under supervision  
37-45 for gross or continuing mismanagement, gross or continuing  
37-46 noncompliance with this chapter or a rule adopted under this  
37-47 chapter [~~commission rules~~], or noncompliance with an order issued  
37-48 under this chapter [~~commission orders~~].

37-49 (b) While supervising a utility, the utility commission may  
37-50 require the utility to abide by conditions and requirements  
37-51 prescribed by the utility commission, including:

37-52 (1) management requirements;

37-53 (2) additional reporting requirements;

37-54 (3) restrictions on hiring, salary or benefit  
37-55 increases, capital investment, borrowing, stock issuance or  
37-56 dividend declarations, and liquidation of assets; and

37-57 (4) a requirement that the utility place the utility's  
37-58 funds into an account in a financial institution approved by the  
37-59 utility commission and use of those funds shall be restricted to  
37-60 reasonable and necessary utility expenses.

37-61 (c) While supervising a utility, the utility commission may  
37-62 require that the utility obtain [~~commission~~] approval from the  
37-63 utility commission before taking any action that may be restricted  
37-64 under Subsection (b) [~~of this section~~]. Any action or transaction  
37-65 which occurs without [~~commission~~] approval may be voided by the  
37-66 utility commission.

37-67 SECTION 71. Subsections (a), (b), and (d), Section 13.4132,  
37-68 Water Code, are amended to read as follows:

37-69 (a) The utility commission or the commission, after

38-1 providing to the utility notice and an opportunity to be heard by  
 38-2 the commissioners at a utility commission or commission meeting,  
 38-3 may authorize a willing person to temporarily manage and operate a  
 38-4 utility if the utility:

38-5 (1) has discontinued or abandoned operations or the  
 38-6 provision of services; or

38-7 (2) has been or is being referred to the attorney  
 38-8 general for the appointment of a receiver under Section 13.412.

38-9 (b) The utility commission or the commission may appoint a  
 38-10 person under this section by emergency order, and notice of the  
 38-11 action is adequate if the notice is mailed or hand-delivered to the  
 38-12 last known address of the utility's headquarters.

38-13 (d) This section does not affect the authority of the  
 38-14 utility commission or the commission to pursue an enforcement claim  
 38-15 against a utility or an affiliated interest.

38-16 SECTION 72. Subsections (a) and (c), Section 13.4133, Water  
 38-17 Code, are amended to read as follows:

38-18 (a) Notwithstanding the requirements of Subchapter F  
 38-19 [~~Section 13.187 of this code~~], the utility commission may authorize  
 38-20 an emergency rate increase for a utility for which a person has been  
 38-21 appointed under Section 13.4132 [~~of this code~~] or for which a  
 38-22 receiver has been appointed under Section 13.412 [~~of this code~~] if  
 38-23 the increase is necessary to ensure the provision of continuous and  
 38-24 adequate services to the utility's customers.

38-25 (c) The utility commission shall schedule a hearing to  
 38-26 establish a final rate within 15 months after the date on which an  
 38-27 emergency rate increase takes effect. The utility commission shall  
 38-28 require the utility to provide notice of the hearing to each  
 38-29 customer. The additional revenues collected under an emergency  
 38-30 rate increase are subject to refund if the utility commission finds  
 38-31 that the rate increase was larger than necessary to ensure  
 38-32 continuous and adequate service.

38-33 SECTION 73. Subsections (a) and (c), Section 13.414, Water  
 38-34 Code, are amended to read as follows:

38-35 (a) Any retail public utility or affiliated interest that  
 38-36 violates this chapter, fails to perform a duty imposed on it, or  
 38-37 fails, neglects, or refuses to obey an order, rule, direction, or  
 38-38 requirement of the utility commission or the commission or decree  
 38-39 or judgment of a court is subject to a civil penalty of not less than  
 38-40 \$100 nor more than \$5,000 for each violation.

38-41 (c) The attorney general shall institute suit on his own  
 38-42 initiative or at the request of, in the name of, and on behalf of the  
 38-43 utility commission or the commission in a court of competent  
 38-44 jurisdiction to recover the penalty under this section.

38-45 SECTION 74. Subsections (a), (b), (c), (d), (e), (f), (g),  
 38-46 (h), (i), (j), (k), and (m), Section 13.4151, Water Code, are  
 38-47 amended to read as follows:

38-48 (a) If a person, affiliated interest, or entity subject to  
 38-49 the jurisdiction of the utility commission or the commission  
 38-50 violates this chapter or a rule or order adopted under this chapter,  
 38-51 the utility commission or the commission, as applicable, may assess  
 38-52 a penalty against that person, affiliated interest, or entity as  
 38-53 provided by this section. The penalty may be in an amount not to  
 38-54 exceed \$5,000 a day. Each day a violation continues may be  
 38-55 considered a separate violation.

38-56 (b) In determining the amount of the penalty, the utility  
 38-57 commission or the commission shall consider:

38-58 (1) the nature, circumstances, extent, duration, and  
 38-59 gravity of the prohibited acts or omissions;

38-60 (2) with respect to the alleged violator:

38-61 (A) the history and extent of previous  
 38-62 violations;

38-63 (B) the degree of culpability, including whether  
 38-64 the violation was attributable to mechanical or electrical failures  
 38-65 and whether the violation could have been reasonably anticipated  
 38-66 and avoided;

38-67 (C) the demonstrated good faith, including  
 38-68 actions taken by the person, affiliated interest, or entity to  
 38-69 correct the cause of the violation;

(D) any economic benefit gained through the

violation; and

(E) the amount necessary to deter future

violations; and

(3) any other matters that justice requires.

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

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

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

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

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

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

40-1 after the date on which the decision is adopted.

40-2 (i) Within the 30-day period immediately following the day  
40-3 on which the utility commission's or commission's order is final, as  
40-4 provided by Subchapter F, Chapter 2001, Government Code, the  
40-5 person, affiliated interest, or retail public utility charged with  
40-6 the penalty shall:

40-7 (1) pay the penalty in full; or

40-8 (2) if the person, affiliated interest, or retail  
40-9 public utility seeks judicial review of the fact of the violation,  
40-10 the amount of the penalty, or both:

40-11 (A) forward the amount of the penalty to the  
40-12 appropriate agency [~~commission~~] for placement in an escrow account;  
40-13 or

40-14 (B) post with the appropriate agency  
40-15 [~~commission~~] a supersedeas bond in a form approved by the agency  
40-16 [~~commission~~] for the amount of the penalty to be effective until all  
40-17 judicial review of the order or decision is final.

40-18 (j) Failure to forward the money to or to post the bond with  
40-19 the utility commission or the commission within the time provided  
40-20 by Subsection (i) [~~of this section~~] constitutes a waiver of all  
40-21 legal rights to judicial review. If the person, affiliated  
40-22 interest, or retail public utility charged fails to forward the  
40-23 money or post the bond as provided by Subsection (i) [~~of this~~  
40-24 ~~section~~], the appropriate agency [~~commission~~] or the executive  
40-25 director of that agency may forward the matter to the attorney  
40-26 general for enforcement.

40-27 (k) Judicial review of the order or decision of the utility  
40-28 commission or the commission assessing the penalty shall be under  
40-29 the substantial evidence rule and may be instituted by filing a  
40-30 petition with a district court in Travis County, as provided by  
40-31 Subchapter G, Chapter 2001, Government Code.

40-32 (m) Notwithstanding any other provision of law, the utility  
40-33 commission or the commission may compromise, modify, extend the  
40-34 time for payment of, or remit, with or without condition, any  
40-35 penalty imposed under this section.

40-36 SECTION 75. Section 13.417, Water Code, is amended to read  
40-37 as follows:

40-38 Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail  
40-39 public utility fails to comply with any lawful order of the utility  
40-40 commission or the commission or with any subpoena or subpoena duces  
40-41 tecum or if any witness refuses to testify about any matter on which  
40-42 he may be lawfully interrogated, the utility commission or the  
40-43 commission may apply to any court of competent jurisdiction to  
40-44 compel obedience by proceedings for contempt.

40-45 SECTION 76. Section 13.418, Water Code, is amended to read  
40-46 as follows:

40-47 Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER  
40-48 UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected  
40-49 under this chapter from a retail public utility that is not a public  
40-50 utility in other than criminal proceedings shall be [~~paid to the~~  
40-51 ~~commission and~~] deposited in the general revenue fund.

40-52 (b) Fines and penalties collected from a public utility  
40-53 under this chapter in other than criminal proceedings shall be  
40-54 [~~paid to the commission and~~] deposited in the water utility  
40-55 improvement account as provided by Section 341.0485, Health and  
40-56 Safety Code.

40-57 SECTION 77. Subdivision (7), Section 13.501, Water Code, is  
40-58 amended to read as follows:

40-59 (7) "Multiple use facility" means commercial or  
40-60 industrial parks, office complexes, marinas, and others  
40-61 specifically identified in utility commission rules with five or  
40-62 more units.

40-63 SECTION 78. Subsection (e), Section 13.502, Water Code, is  
40-64 amended to read as follows:

40-65 (e) An owner of an apartment house, manufactured home rental  
40-66 community, or multiple use facility or a manager of a condominium  
40-67 may not change from submetered billing to allocated billing unless:

40-68 (1) the utility commission [~~executive director~~]  
40-69 approves of the change in writing after a demonstration of good



41-1 cause, including meter reading or billing problems that could not  
41-2 feasibly be corrected or equipment failures; and

41-3 (2) the property owner meets rental agreement  
41-4 requirements established by the utility commission.

41-5 SECTION 79. Subsections (a), (b), and (e), Section 13.503,  
41-6 Water Code, are amended to read as follows:

41-7 (a) The utility commission shall encourage submetering of  
41-8 individual rental or dwelling units by master meter operators or  
41-9 building owners to enhance the conservation of water resources.

41-10 (b) Notwithstanding any other law, the utility commission  
41-11 shall adopt rules and standards under which an owner, operator, or  
41-12 manager of an apartment house, manufactured home rental community,  
41-13 or multiple use facility that is not individually metered for water  
41-14 for each rental or dwelling unit may install submetering equipment  
41-15 for each individual rental or dwelling unit for the purpose of  
41-16 fairly allocating the cost of each individual rental or dwelling  
41-17 unit's water consumption, including wastewater charges based on  
41-18 water consumption. In addition to other appropriate safeguards for  
41-19 the tenant, the rules shall require that, except as provided by this  
41-20 section, an apartment house owner, manufactured home rental  
41-21 community owner, multiple use facility owner, or condominium  
41-22 manager may not impose on the tenant any extra charges, over and  
41-23 above the cost per gallon and any other applicable taxes and  
41-24 surcharges that are charged by the retail public utility to the  
41-25 owner or manager, and that the rental unit or apartment house owner  
41-26 or manager shall maintain adequate records regarding submetering  
41-27 and make the records available for inspection by the tenant during  
41-28 reasonable business hours. The rules shall allow an owner or  
41-29 manager to charge a tenant a fee for late payment of a submetered  
41-30 water bill if the amount of the fee does not exceed five percent of  
41-31 the bill paid late. All submetering equipment is subject to the  
41-32 rules and standards established by the utility commission for  
41-33 accuracy, testing, and record keeping of meters installed by  
41-34 utilities and to the meter-testing requirements of Section 13.140  
41-35 [~~of this code~~].

41-36 (e) The utility commission may authorize a building owner to  
41-37 use submetering equipment that relies on integrated radio based  
41-38 meter reading systems and remote registration in a building  
41-39 plumbing system using submeters that comply with nationally  
41-40 recognized plumbing standards and are as accurate as utility water  
41-41 meters in single application conditions.

41-42 SECTION 80. Section 13.5031, Water Code, is amended to read  
41-43 as follows:

41-44 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any  
41-45 other law, the utility commission shall adopt rules and standards  
41-46 governing billing systems or methods used by manufactured home  
41-47 rental community owners, apartment house owners, condominium  
41-48 managers, or owners of other multiple use facilities for prorating  
41-49 or allocating among tenants nonsubmetered master metered utility  
41-50 service costs. In addition to other appropriate safeguards for the  
41-51 tenant, those rules shall require that:

41-52 (1) the rental agreement contain a clear written  
41-53 description of the method of calculation of the allocation of  
41-54 nonsubmetered master metered utilities for the manufactured home  
41-55 rental community, apartment house, or multiple use facility;

41-56 (2) the rental agreement contain a statement of the  
41-57 average manufactured home, apartment, or multiple use facility unit  
41-58 monthly bill for all units for any allocation of those utilities for  
41-59 the previous calendar year;

41-60 (3) except as provided by this section, an owner or  
41-61 condominium manager may not impose additional charges on a tenant  
41-62 in excess of the actual charges imposed on the owner or condominium  
41-63 manager for utility consumption by the manufactured home rental  
41-64 community, apartment house, or multiple use facility;

41-65 (4) the owner or condominium manager shall maintain  
41-66 adequate records regarding the utility consumption of the  
41-67 manufactured home rental community, apartment house, or multiple  
41-68 use facility, the charges assessed by the retail public utility,  
41-69 and the allocation of the utility costs to the tenants;

42-1 (5) the owner or condominium manager shall maintain  
 42-2 all necessary records concerning utility allocations, including  
 42-3 the retail public utility's bills, and shall make the records  
 42-4 available for inspection by the tenants during normal business  
 42-5 hours; and

42-6 (6) the owner or condominium manager may charge a  
 42-7 tenant a fee for late payment of an allocated water bill if the  
 42-8 amount of the fee does not exceed five percent of the bill paid  
 42-9 late.

42-10 SECTION 81. Section 13.505, Water Code, is amended to read  
 42-11 as follows:

42-12 Sec. 13.505. ENFORCEMENT. In addition to the enforcement  
 42-13 provisions contained in Subchapter K [~~of this chapter~~], if an  
 42-14 apartment house owner, condominium manager, manufactured home  
 42-15 rental community owner, or other multiple use facility owner  
 42-16 violates a rule of the utility commission regarding submetering of  
 42-17 utility service consumed exclusively within the tenant's dwelling  
 42-18 unit or multiple use facility unit or nonsubmetered master metered  
 42-19 utility costs, the tenant may recover three times the amount of any  
 42-20 overcharge, a civil penalty equal to one month's rent, reasonable  
 42-21 attorney's fees, and court costs from the owner or condominium  
 42-22 manager. However, an owner of an apartment house, manufactured  
 42-23 home rental community, or other multiple use facility or  
 42-24 condominium manager is not liable for a civil penalty if the owner  
 42-25 or condominium manager proves the violation was a good faith,  
 42-26 unintentional mistake.

42-27 SECTION 82. Section 13.512, Water Code, is amended to read  
 42-28 as follows:

42-29 Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION  
 42-30 CONTRACTS. Any eligible city is authorized to enter into  
 42-31 privatization contracts if such action is recommended by the board  
 42-32 of utility trustees and authorized by the governing body of the  
 42-33 eligible city pursuant to an ordinance. Any privatization contract  
 42-34 entered into prior to the effective date of this Act is validated,  
 42-35 ratified, and approved. Each eligible city shall file a copy of its  
 42-36 privatization contract with the utility commission, for  
 42-37 information purposes only, within 60 days of execution or the  
 42-38 effective date of this Act, whichever is later.

42-39 SECTION 83. Section 13.513, Water Code, is amended to read  
 42-40 as follows:

42-41 Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE  
 42-42 PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider  
 42-43 shall not constitute a "water and sewer utility," a "public  
 42-44 utility," a "utility," or a "retail public utility" within the  
 42-45 meaning of this chapter [~~Chapter 13~~] as a result of entering into or  
 42-46 performing a privatization contract, if the governing body of the  
 42-47 eligible city shall so elect by ordinance and provide notice  
 42-48 thereof in writing to the utility commission; provided, however,  
 42-49 this provision shall not affect the application of this chapter  
 42-50 [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything  
 42-51 contained in this section, any service provider who seeks to extend  
 42-52 or render sewer service to any person or municipality other than, or  
 42-53 in addition to, an eligible city may be a "public utility" for the  
 42-54 purposes of this chapter [~~Chapter 13~~] with respect to such other  
 42-55 person or municipality.

42-56 SECTION 84. Subsection (c), Section 49.352, Water Code, is  
 42-57 amended to read as follows:

42-58 (c) For purposes of this section, a municipality may obtain  
 42-59 single certification in the manner provided by Section 13.255,  
 42-60 except that the municipality may file an application with the  
 42-61 Public Utility Commission of Texas [~~commission~~] to grant single  
 42-62 certification immediately after the municipality provides notice  
 42-63 of intent to provide service as required by Section 13.255(b).

42-64 SECTION 85. Subsection (e), Section 552.047, Local  
 42-65 Government Code, is amended to read as follows:

42-66 (e) Users residing within the established service area, but  
 42-67 outside the municipality's boundaries, may appeal rates  
 42-68 established for drainage charges under [~~to the Texas Natural~~  
 42-69 ~~Resource Conservation Commission as authorized by~~] Section

43-1 13.043(b), ~~[of the]~~ Water Code.

43-2 SECTION 86. Subsection (b), Section 7201.004, Special  
43-3 District Local Laws Code, is amended to read as follows:

43-4 (b) This section does not apply to:

43-5 (1) rules or regulations concerning potable water  
43-6 quality standards; or

43-7 (2) conflicts relating to service areas or  
43-8 certificates issued to the corporation or district by the Public  
43-9 Utility Commission of Texas or the Texas Commission on  
43-10 Environmental Quality.

43-11 SECTION 87. Subsection (c), Section 7201.005, Special  
43-12 District Local Laws Code, is amended to read as follows:

43-13 (c) District boundaries may be modified in accordance with  
43-14 Chapters 13 and 49, Water Code, except that the boundaries must  
43-15 include all territory in any area included under a certificate of  
43-16 convenience and necessity issued by the Public Utility Commission  
43-17 of Texas or the Texas Commission on Environmental Quality to the  
43-18 district.

43-19 SECTION 88. Section 7201.102, Special District Local Laws  
43-20 Code, is amended to read as follows:

43-21 Sec. 7201.102. PROVISION OF SERVICE. The district shall at  
43-22 all times operate and construct necessary improvements within the  
43-23 certificated areas established by the Public Utility Commission of  
43-24 Texas or the Texas Commission on Environmental Quality ~~[commission]~~  
43-25 to provide uninterrupted, continuous, and adequate service to  
43-26 existing and future customers for water, sewer, and contract  
43-27 services.

43-28 SECTION 89. Subsection (b), Section 8363.106, Special  
43-29 District Local Laws Code, is amended to read as follows:

43-30 (b) In relation to a retail public utility that provides  
43-31 water or sewer service to all or part of the area of the district  
43-32 under a certificate of public convenience and necessity, the  
43-33 district may exercise the powers given to a municipality provided  
43-34 by Section 13.255, Water Code, as if the district were a  
43-35 municipality that had annexed the area of the district. The Public  
43-36 Utility Commission of Texas ~~[commission]~~ shall grant single  
43-37 certification as to the city as provided by Section 13.255(c),  
43-38 Water Code, in the event that the district applies for the  
43-39 certification on the city's behalf in the manner provided by  
43-40 Section 13.255(b), Water Code.

43-41 SECTION 90. Subsection (a), Section 8363.251, Special  
43-42 District Local Laws Code, is amended to read as follows:

43-43 (a) The city may dissolve the district by ordinance after  
43-44 provision is made for all debts incurred by the district if one or  
43-45 more of the following does not occur:

43-46 (1) on or before the 90th day after the effective date  
43-47 of the Act enacting this chapter, the city receives one or more  
43-48 petitions requesting annexation of all territory in the district  
43-49 remaining in the extraterritorial jurisdiction of the city;

43-50 (2) on or before the last day of the ninth month after  
43-51 the effective date of the Act enacting this chapter, the city adopts  
43-52 one or more ordinances annexing all territory in the district  
43-53 remaining in the city's extraterritorial jurisdiction;

43-54 (3) on or before the last day of the third year after  
43-55 the effective date of the Act enacting this chapter, the Public  
43-56 Utility Commission of Texas ~~[commission]~~ issues an order approving  
43-57 the sale and transfer of a certificate of public convenience and  
43-58 necessity authorizing the city to provide retail water service to  
43-59 territory in the district; or

43-60 (4) by the end of the fifth year after the effective  
43-61 date of the Act enacting this chapter, the district has completed  
43-62 construction of internal streets and water and sanitary sewer  
43-63 facilities sufficient to serve at least 100 residential lots in the  
43-64 district.

43-65 SECTION 91. Section 8801.201, Special District Local Laws  
43-66 Code, is amended to read as follows:

43-67 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A person  
43-68 who is required to convert to surface water under this chapter and  
43-69 who purchases that water supply wholesale from a political

44-1 subdivision as defined by Section 12.013(b), Water Code, may appeal  
 44-2 to the Public Utility Commission of Texas [~~commission~~] the rates  
 44-3 the political subdivision charges to the person. Chapter 12, Water  
 44-4 Code, and rules adopted under that chapter apply to an appeal under  
 44-5 this section.

44-6 (b) The Public Utility Commission of Texas [~~commission~~]  
 44-7 shall hear the appeal not later than the 180th day after the date  
 44-8 the appeal is filed.

44-9 (c) The Public Utility Commission of Texas [~~commission~~]  
 44-10 shall issue a final decision on the appeal not later than the 60th  
 44-11 day after the date the hearing ends.

44-12 SECTION 92. (a) On September 1, 2014, the following are  
 44-13 transferred from the Texas Commission on Environmental Quality to  
 44-14 the Public Utility Commission of Texas:

44-15 (1) the powers, duties, functions, programs, and  
 44-16 activities of the Texas Commission on Environmental Quality  
 44-17 relating to the economic regulation of water and sewer service,  
 44-18 including the issuance and transfer of certificates of convenience  
 44-19 and necessity, the determination of rates, and the administration  
 44-20 of hearings and proceedings involving those matters, under Sections  
 44-21 11.041 and 12.013 and Chapter 13, Water Code, as provided by this  
 44-22 Act;

44-23 (2) any obligations and contracts of the Texas  
 44-24 Commission on Environmental Quality that are directly related to  
 44-25 implementing a power, duty, function, program, or activity  
 44-26 transferred under this Act; and

44-27 (3) all property and records in the custody of the  
 44-28 Texas Commission on Environmental Quality that are related to a  
 44-29 power, duty, function, program, or activity transferred under this  
 44-30 Act and all funds appropriated by the legislature for that power,  
 44-31 duty, function, program, or activity.

44-32 (b) The Texas Commission on Environmental Quality shall  
 44-33 continue to carry out the commission's duties related to the  
 44-34 economic regulation of water and sewer service under the law as it  
 44-35 existed immediately before the effective date of this Act until  
 44-36 September 1, 2014, and the former law is continued in effect for  
 44-37 that purpose.

44-38 (c) The Texas Commission on Environmental Quality and the  
 44-39 Public Utility Commission of Texas shall enter into a memorandum of  
 44-40 understanding that:

44-41 (1) identifies in detail the applicable powers and  
 44-42 duties that are transferred by this Act;

44-43 (2) establishes a plan for the identification and  
 44-44 transfer of the records, personnel, property, and unspent  
 44-45 appropriations of the Texas Commission on Environmental Quality  
 44-46 that are used for purposes of the commission's powers and duties  
 44-47 directly related to the economic regulation of water and sewer  
 44-48 service under Sections 11.041 and 12.013 and Chapter 13, Water  
 44-49 Code, as amended by this Act; and

44-50 (3) establishes a plan for the transfer of all pending  
 44-51 applications, hearings, rulemaking proceedings, and orders  
 44-52 relating to the economic regulation of water and sewer service  
 44-53 under Sections 11.041 and 12.013 and Chapter 13, Water Code, as  
 44-54 amended by this Act, from the Texas Commission on Environmental  
 44-55 Quality to the Public Utility Commission of Texas.

44-56 (d) The memorandum of understanding under this section:

44-57 (1) is not required to be adopted by rule under Section  
 44-58 5.104, Water Code; and

44-59 (2) must be completed by August 1, 2014.

44-60 (e) The executive directors of the Texas Commission on  
 44-61 Environmental Quality and the Public Utility Commission of Texas  
 44-62 may agree in the memorandum of understanding under this section to  
 44-63 transfer to the Public Utility Commission of Texas any personnel of  
 44-64 the Texas Commission on Environmental Quality whose functions  
 44-65 predominantly involve powers, duties, obligations, functions, and  
 44-66 activities related to the economic regulation of water and sewer  
 44-67 service under Sections 11.041 and 12.013 and Chapter 13, Water  
 44-68 Code, as amended by this Act.

44-69 (f) The Texas Commission on Environmental Quality and the

45-1 Public Utility Commission of Texas shall periodically update the  
45-2 Office of Public Utility Counsel on the anticipated contents of the  
45-3 memorandum of understanding under this section during the  
45-4 development of the memorandum.

45-5 (g) On or after September 1, 2013, the Office of Public  
45-6 Utility Counsel may initiate or intervene in a contested case  
45-7 before the Texas Commission on Environmental Quality that the  
45-8 office would be entitled to initiate or intervene in if the case  
45-9 were before the Public Utility Commission of Texas, as authorized  
45-10 by Chapter 13, Water Code, as amended by this Act.

45-11 (h) The Texas Commission on Environmental Quality and the  
45-12 Public Utility Commission of Texas shall appoint a transition team  
45-13 to accomplish the purposes of this section. The transition team may  
45-14 consult with the Office of Public Utility Counsel to accomplish the  
45-15 purposes of this section. The transition team shall establish  
45-16 guidelines on how the two agencies will cooperate regarding:

- 45-17 (1) meeting federal drinking water standards;  
45-18 (2) maintaining adequate supplies of water;  
45-19 (3) meeting established design criteria for  
45-20 wastewater treatment plants;  
45-21 (4) demonstrating the economic feasibility of  
45-22 regionalization; and  
45-23 (5) serving the needs of economically distressed  
45-24 areas.

45-25 (i) The transition team appointed under Subsection (h) of  
45-26 this section shall provide monthly updates to the executive  
45-27 directors of the Texas Commission on Environmental Quality and the  
45-28 Public Utility Commission of Texas on the implementation of this  
45-29 Act and provide a final report on the implementation to the  
45-30 executive directors not later than September 1, 2014.

45-31 (j) A rule, form, policy, procedure, or decision of the  
45-32 Texas Commission on Environmental Quality related to a power, duty,  
45-33 function, program, or activity transferred under this Act continues  
45-34 in effect as a rule, form, policy, procedure, or decision of the  
45-35 Public Utility Commission of Texas and remains in effect until  
45-36 amended or replaced by that agency. Notwithstanding any other law,  
45-37 beginning September 1, 2013, the Public Utility Commission of Texas  
45-38 may propose rules, forms, policies, and procedures related to a  
45-39 function to be transferred to the Public Utility Commission of  
45-40 Texas under this Act.

45-41 (k) The Public Utility Commission of Texas and the Texas  
45-42 Commission on Environmental Quality shall adopt rules to implement  
45-43 the changes in law made by this Act to Sections 11.041 and 12.013  
45-44 and Chapter 13, Water Code, not later than September 1, 2015.

45-45 (l) An affiliate of a Class A utility, as those terms are  
45-46 defined by Section 13.002, Water Code, as amended by this Act, may  
45-47 not file an application for a rate change on or after the effective  
45-48 date of this Act unless the affiliated Class A utility has filed for  
45-49 a rate change on or after that date. In relation to the application  
45-50 filed by the affiliate of the Class A utility, the Public Utility  
45-51 Commission of Texas:

45-52 (1) may not approve the rate change application until  
45-53 the Public Utility Commission of Texas approves the rate change  
45-54 application filed by the affiliated Class A utility; and

45-55 (2) may require the affiliate to comply with the Class  
45-56 A utility rate change process prescribed by Section 13.187, Water  
45-57 Code, regardless of whether the affiliate is classified as a Class  
45-58 A, B, or C utility under Section 13.002, Water Code, as amended by  
45-59 this Act.

45-60 SECTION 93. This Act takes effect September 1, 2013.

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