

By: Watson, Nichols

S.B. No. 1162

A BILL TO BE ENTITLED

AN ACT

relating to requirements for the purchase or acquisition of a water or sewer system.

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

SECTION 1. Section 13.301, Water Code, is amended by amending Subsections (a), (d), (e), (f), and (g) and adding Subsections (a-1), (a-2), (a-3), (a-4), (a-5), and (e-1) to read as follows:

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

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

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

(a-1) The commission shall post the application on the commission's Internet website not later than the 30th day after the date the application is accepted for filing.

(a-2) Except as provided by Subsection (a-4) or (a-5), for a proposed sale, acquisition, lease, rental, merger, or

1 consolidation transaction subject to Subsection (a) that involves
2 more than one utility or water supply or sewer service corporation,
3 or that involves a single utility or water supply or sewer service
4 corporation and a political subdivision's water or sewer system, at
5 the time notice is given under Subsection (a)(2), the parties to the
6 proposed transaction jointly shall mail written notice to each
7 affected customer in accordance with commission rules. The written
8 notice must include:

9 (1) a comparison of the rates and quality-of-service
10 records of the parties;

11 (2) the purchase price or lease rate of the sale,
12 acquisition, lease, or rental;

13 (3) the anticipated transaction costs, including
14 legal fees, regulatory fees, and interest;

15 (4) a disclosure of:

16 (A) any investments or expenses any party to the
17 transaction anticipates it will make during the next 24 months for
18 infrastructure improvement to a water or sewer system involved in
19 the transaction; and

20 (B) the estimated effect the investments or
21 expenses will have on rates;

22 (5) the expected closing date of the transaction;

23 (6) the estimated date by which customers to be
24 affected by the transaction will be required to pay service fees in
25 an amount different than service fees payable by those customers on
26 the date of the application;

27 (7) any plans to implement a rate change during the

1 pendency of the proposed transaction; and

2 (8) notice to the customer that the customer can make a
3 written request for a public hearing to the commission.

4 (a-3) Notwithstanding any other provision of this section,
5 the executive director may waive the notice requirement if the
6 sale, acquisition, lease, rental, merger, or consolidation
7 transaction involves two or more parties, and all but one are in
8 receivership, are under temporary management, or have been referred
9 for the appointment of a temporary management or receivership.

10 (a-4) If the notice required by Subsection (a-2) would be
11 more than two pages long, the notice may be provided by mailing an
12 abbreviated notice that contains:

13 (1) a brief description of the contents and purpose of
14 the notice; and

15 (2) the exact Internet address, by uniform resource
16 locator, of the commission's Internet website where the person can
17 access the information required under Subsection (a-2).

18 (a-5) A party to the proposed transaction who is required to
19 provide written notice to customers under Subsection (a-2) may
20 provide electronic notice by electronic mail instead of written
21 notice to a customer who has agreed to receive other information
22 related to that customer's account by electronic mail.

23 (d) After the parties to the proposed transaction have made
24 the application as required by this section and provided notice as
25 required by this section, the [The] commission shall, with or
26 without a public hearing, investigate the sale, acquisition, lease,
27 [or] rental, merger, or consolidation to determine whether the

1 proposed transaction will serve the public interest. In making the
2 determination, the commission shall consider:

- 3 (1) the factors listed under Section 13.246(c);
4 (2) the anticipated benefits of the transaction;
5 (3) the anticipated costs of the transaction;
6 (4) whether the price to be paid for the assets is
7 excessive; and
8 (5) if the applicant intends to consolidate water or
9 sewer systems under a single tariff, whether the systems being
10 consolidated have substantially similar facilities, quality of
11 service, and cost of service.

12 (e) On [~~Before~~] the expiration of the 120-day notification
13 period, the executive director shall notify all known parties to
14 the transaction of the executive director's decision whether to
15 request that the commission hold a public hearing to determine if
16 the transaction will serve the public interest. The executive
17 director shall request a public hearing if, before the expiration
18 of the 120-day notification period, at least 10 percent of the
19 customers of a utility or a water supply or sewer service
20 corporation subject to Subsection (a-2) make a written request for
21 a public hearing. The executive director may request a hearing if:

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

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

1 currently certificated to the person;

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

4 (A) noncompliance with the requirements of the
5 commission [~~or the Texas Department of Health~~]; or

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

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

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

18 (e-1) The commission shall hold a public hearing at the
19 request of the executive director.

20 (f) Unless the executive director requests that a public
21 hearing be held, the sale, acquisition, lease, [~~or~~] rental, merger,
22 or consolidation may be completed as proposed:

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

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

27 (g) If a public hearing is requested by the executive

1 director [~~or if the utility or water supply or sewer service~~
2 ~~corporation fails to make the application as required or to provide~~
3 ~~public notice~~], the sale, acquisition, lease, [~~or~~] rental, merger,
4 or consolidation may not be completed unless the commission
5 determines after a public hearing that the proposed transaction
6 serves the public interest.

7 SECTION 2. Section 13.301, Water Code, as amended by this
8 Act, applies only to a sale, acquisition, lease, rental, merger, or
9 consolidation for which an application is filed with the Texas
10 Commission on Environmental Quality on or after January 1, 2014. A
11 sale, acquisition, lease, rental, merger, or consolidation for
12 which an application is filed before January 1, 2014, is governed by
13 the law in effect immediately before the effective date of this Act,
14 and that law is continued in effect for that purpose.

15 SECTION 3. The changes in law made by this Act do not affect
16 a transfer of state agency functions as provided by another Act of
17 the 83rd Legislature, Regular Session, 2013, that becomes law. To
18 the extent functions of the Texas Commission on Environmental
19 Quality affected by the changes in law are transferred to another
20 agency, references to the commission in Section 13.301, Water Code,
21 as amended by this Act, shall be construed as references to the
22 other agency.

23 SECTION 4. This Act takes effect September 1, 2013.