

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), 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) For a proposed sale, acquisition, lease, rental, merger, or consolidation transaction subject to Subsection (a) that involves more than one utility or water supply or sewer service

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

7 (1) a comparison of the rates and quality-of-service
8 records of the parties;

9 (2) the purchase price or lease rate of the sale,
10 acquisition, lease, or rental;

11 (3) the anticipated transaction costs, including
12 legal fees, regulatory fees, and interest;

13 (4) a disclosure of:

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

18 (B) the estimated effect the investments or
19 expenses will have on rates;

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

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

25 (7) any plans to implement a rate change during the
26 pendency of the proposed transaction; and

27 (8) notice to the customer that the customer can make a

1 written request for a public hearing to the commission.

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

8 (d) After the parties to the proposed transaction have made
9 the application as required by this section and provided notice as
10 required by this section, the [The] commission shall, with or
11 without a public hearing, investigate the sale, acquisition, lease,
12 [or] rental, merger, or consolidation to determine whether the
13 proposed transaction will serve the public interest. In making the
14 determination, the commission shall consider:

15 (1) the factors listed under Section 13.246(c);
16 (2) the anticipated benefits of the transaction;
17 (3) the anticipated costs of the transaction;
18 (4) whether the price to be paid for the assets is
19 excessive; and

20 (5) if the applicant intends to consolidate water or
21 sewer systems under a single tariff, whether the systems being
22 consolidated have substantially similar facilities, quality of
23 service, and cost of service.

24 (e) On [Before] the expiration of the 120-day notification
25 period, the executive director shall notify all known parties to
26 the transaction of the executive director's decision whether to
27 request that the commission hold a public hearing to determine if

1 the transaction will serve the public interest. The executive
2 director shall request a public hearing if, before the expiration
3 of the 120-day notification period, at least 10 percent of the
4 customers of a utility or a water supply or sewer service
5 corporation subject to Subsection (a-2) make a written request for
6 a public hearing. The executive director may request a hearing if:

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

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

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

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

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

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

25 (5) there are concerns that the transaction may not
26 serve the public interest, after the application of the
27 considerations provided by Subsection (d) [~~Section 13.246(c) for~~

1 ~~determining whether to grant a certificate of convenience and~~
2 ~~necessity~~].

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

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

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

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

12 (g) If a public hearing is requested by the executive
13 director ~~[or if the utility or water supply or sewer service~~
14 ~~corporation fails to make the application as required or to provide~~
15 ~~public notice]~~, the sale, acquisition, lease, ~~[or]~~ rental, merger,
16 or consolidation may not be completed unless the commission
17 determines after a public hearing that the proposed transaction
18 serves the public interest.

19 SECTION 2. Section 13.301, Water Code, as amended by this
20 Act, applies only to a sale, acquisition, lease, rental, merger, or
21 consolidation for which an application is filed with the Texas
22 Commission on Environmental Quality on or after January 1, 2014. A
23 sale, acquisition, lease, rental, merger, or consolidation for
24 which an application is filed before January 1, 2014, is governed by
25 the law in effect immediately before the effective date of this Act,
26 and that law is continued in effect for that purpose.

27 SECTION 3. The changes in law made by this Act do not affect

1 a transfer of state agency functions as provided by another Act of
2 the 83rd Legislature, Regular Session, 2013, that becomes law. To
3 the extent functions of the Texas Commission on Environmental
4 Quality affected by the changes in law are transferred to another
5 agency, references to the commission in Section 13.301, Water Code,
6 as amended by this Act, shall be construed as references to the
7 other agency.

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