

1-1 By: Watson, Nichols S.B. No. 1162  
 1-2 (In the Senate - Filed March 5, 2013; March 12, 2013, read  
 1-3 first time and referred to Committee on Natural Resources;  
 1-4 April 10, 2013, reported favorably by the following vote: Yeas 9,  
 1-5 Nays 0; April 10, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
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	X			

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

1-21 relating to requirements for the purchase or acquisition of a water  
 1-22 or sewer system.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 13.301, Water Code, is amended by  
 1-25 amending Subsections (a), (d), (e), (f), and (g) and adding  
 1-26 Subsections (a-1), (a-2), (a-3), and (e-1) to read as follows:

1-27 (a) A utility or a water supply or sewer service  
 1-28 corporation, on or before the 120th day before the effective date of  
 1-29 a sale, acquisition, lease, or rental of a water or sewer system  
 1-30 that is required by law to possess a certificate of public  
 1-31 convenience and necessity or the effective date of a merger or  
 1-32 consolidation with such a utility or water supply or sewer service  
 1-33 corporation, shall:

1-34 (1) file a written application with the commission  
 1-35 electronically; and

1-36 (2) ~~[unless public notice is waived by the executive~~  
 1-37 ~~director for good cause shown,]~~ give public notice of the action.

1-38 (a-1) The commission shall post the application on the  
 1-39 commission's Internet website not later than the 30th day after the  
 1-40 date the application is accepted for filing.

1-41 (a-2) For a proposed sale, acquisition, lease, rental,  
 1-42 merger, or consolidation transaction subject to Subsection (a) that  
 1-43 involves more than one utility or water supply or sewer service  
 1-44 corporation, or that involves a single utility or water supply or  
 1-45 sewer service corporation and a political subdivision's water or  
 1-46 sewer system, at the time notice is given under Subsection (a)(2),  
 1-47 the parties to the proposed transaction jointly shall mail written  
 1-48 notice to each affected customer in accordance with commission  
 1-49 rules. The written notice must include:

1-50 (1) a comparison of the rates and quality-of-service  
 1-51 records of the parties;

1-52 (2) the purchase price or lease rate of the sale,  
 1-53 acquisition, lease, or rental;

1-54 (3) the anticipated transaction costs, including  
 1-55 legal fees, regulatory fees, and interest;

1-56 (4) a disclosure of:

1-57 (A) any investments or expenses any party to the  
 1-58 transaction anticipates it will make during the next 24 months for  
 1-59 infrastructure improvement to a water or sewer system involved in  
 1-60 the transaction; and

1-61 (B) the estimated effect the investments or

2-1 expenses will have on rates;  
2-2 (5) the expected closing date of the transaction;  
2-3 (6) the estimated date by which customers to be  
2-4 affected by the transaction will be required to pay service fees in  
2-5 an amount different than service fees payable by those customers on  
2-6 the date of the application;  
2-7 (7) any plans to implement a rate change during the  
2-8 pendency of the proposed transaction; and  
2-9 (8) notice to the customer that the customer can make a  
2-10 written request for a public hearing to the commission.  
2-11 (a-3) Notwithstanding any other provision of this section,  
2-12 the executive director may waive the notice requirement if the  
2-13 sale, acquisition, lease, rental, merger, or consolidation  
2-14 transaction involves two or more parties, and all but one are in  
2-15 receivership, are under temporary management, or have been referred  
2-16 for the appointment of a temporary management or receivership.  
2-17 (d) After the parties to the proposed transaction have made  
2-18 the application as required by this section and provided notice as  
2-19 required by this section, the [The] commission shall, with or  
2-20 without a public hearing, investigate the sale, acquisition, lease,  
2-21 [or] rental, merger, or consolidation to determine whether the  
2-22 proposed transaction will serve the public interest. In making the  
2-23 determination, the commission shall consider:  
2-24 (1) the factors listed under Section 13.246(c);  
2-25 (2) the anticipated benefits of the transaction;  
2-26 (3) the anticipated costs of the transaction;  
2-27 (4) whether the price to be paid for the assets is  
2-28 excessive; and  
2-29 (5) if the applicant intends to consolidate water or  
2-30 sewer systems under a single tariff, whether the systems being  
2-31 consolidated have substantially similar facilities, quality of  
2-32 service, and cost of service.  
2-33 (e) On [Before] the expiration of the 120-day notification  
2-34 period, the executive director shall notify all known parties to  
2-35 the transaction of the executive director's decision whether to  
2-36 request that the commission hold a public hearing to determine if  
2-37 the transaction will serve the public interest. The executive  
2-38 director shall request a public hearing if, before the expiration  
2-39 of the 120-day notification period, at least 10 percent of the  
2-40 customers of a utility or a water supply or sewer service  
2-41 corporation subject to Subsection (a-2) make a written request for  
2-42 a public hearing. The executive director may request a hearing if:  
2-43 (1) the application filed with the commission or the  
2-44 public notice was improper;  
2-45 (2) the person purchasing or acquiring the water or  
2-46 sewer system has not demonstrated adequate financial, managerial,  
2-47 and technical capability for providing continuous and adequate  
2-48 service to the service area being acquired and to any areas  
2-49 currently certificated to the person;  
2-50 (3) the person or an affiliated interest of the person  
2-51 purchasing or acquiring the water or sewer system has a history of:  
2-52 (A) noncompliance with the requirements of the  
2-53 commission [~~or the Texas Department of Health~~]; or  
2-54 (B) continuing mismanagement or misuse of  
2-55 revenues as a utility service provider;  
2-56 (4) the person purchasing or acquiring the water or  
2-57 sewer system cannot demonstrate the financial ability to provide  
2-58 the necessary capital investment to ensure the provision of  
2-59 continuous and adequate service to the customers of the water or  
2-60 sewer system; or  
2-61 (5) there are concerns that the transaction may not  
2-62 serve the public interest, after the application of the  
2-63 considerations provided by Subsection (d) [~~Section 13.246(c) for~~  
2-64 ~~determining whether to grant a certificate of convenience and~~  
2-65 ~~necessity~~].  
2-66 (e-1) The commission shall hold a public hearing at the  
2-67 request of the executive director.  
2-68 (f) Unless the executive director requests that a public  
2-69 hearing be held, the sale, acquisition, lease, [~~or~~] rental, merger,

3-1 or consolidation may be completed as proposed:

3-2 (1) at the end of the 120-day period; or

3-3 (2) at any time after the executive director notifies  
3-4 the utility or water supply or sewer service corporation that a  
3-5 hearing will not be requested.

3-6 (g) If a public hearing is requested by the executive  
3-7 director [~~or if the utility or water supply or sewer service~~  
3-8 ~~corporation fails to make the application as required or to provide~~  
3-9 ~~public notice~~], the sale, acquisition, lease, [~~or~~] rental, merger,  
3-10 or consolidation may not be completed unless the commission  
3-11 determines after a public hearing that the proposed transaction  
3-12 serves the public interest.

3-13 SECTION 2. Section 13.301, Water Code, as amended by this  
3-14 Act, applies only to a sale, acquisition, lease, rental, merger, or  
3-15 consolidation for which an application is filed with the Texas  
3-16 Commission on Environmental Quality on or after January 1, 2014. A  
3-17 sale, acquisition, lease, rental, merger, or consolidation for  
3-18 which an application is filed before January 1, 2014, is governed by  
3-19 the law in effect immediately before the effective date of this Act,  
3-20 and that law is continued in effect for that purpose.

3-21 SECTION 3. The changes in law made by this Act do not affect  
3-22 a transfer of state agency functions as provided by another Act of  
3-23 the 83rd Legislature, Regular Session, 2013, that becomes law. To  
3-24 the extent functions of the Texas Commission on Environmental  
3-25 Quality affected by the changes in law are transferred to another  
3-26 agency, references to the commission in Section 13.301, Water Code,  
3-27 as amended by this Act, shall be construed as references to the  
3-28 other agency.

3-29 SECTION 4. This Act takes effect September 1, 2013.

3-30

\* \* \* \* \*