

SENATE AMENDMENTS

2nd Printing

By: Cook, Bonnen of Brazoria, Price

H.B. No. 1600

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, and to the functions of the Office of Public Utility Counsel; authorizing a fee.

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

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE PUBLIC UTILITY

COMMISSION OF TEXAS

SECTION 1.01. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2023 [~~2013~~].

SECTION 1.02. Section 12.053, Utilities Code, is amended to read as follows:

Sec. 12.053. MEMBERSHIP QUALIFICATIONS. (a) To be eligible for appointment, a commissioner must ~~[be]~~:

(1) be a qualified voter;

(2) be a citizen of the United States; ~~[and]~~

(3) be a competent and experienced administrator;

(4) be well informed and qualified in the field of

1 public utilities and utility regulation; and

2 (5) have at least five years of experience in the
3 administration of business or government or as a practicing
4 attorney or certified public accountant ~~[a representative of the~~
5 ~~general public]~~.

6 (b) A person is not eligible for appointment as a
7 commissioner if the person:

8 (1) at any time during the two years preceding
9 appointment:

10 (A) personally served as an officer, director,
11 owner, employee, partner, or legal representative of a public
12 utility regulated by the commission or of an~~[7]~~ affiliate~~[7]~~ or
13 direct competitor of a public utility regulated by the commission;
14 or

15 (B) owned or controlled, directly or indirectly,
16 more than a 10 percent interest ~~[stocks or bonds of any class with a~~
17 ~~value of \$10,000 or more]~~ in a public utility regulated by the
18 commission or in an~~[7]~~ affiliate~~[7]~~ or direct competitor of a
19 public utility regulated by the commission; or

20 (2) is not qualified to serve under Section 12.151,
21 12.152, or 12.153.

22 SECTION 1.03. Section 12.152(a), Utilities Code, is amended
23 to read as follows:

24 (a) A person is not eligible for appointment as a
25 commissioner or executive director of the commission if:

26 (1) the person serves on the board of directors of a
27 company that supplies fuel, utility-related services, or

1 utility-related products to regulated or unregulated electric or
2 telecommunications utilities; or

3 (2) the person or the person's spouse:

4 (A) is employed by or participates in the
5 management of a business entity or other organization that is
6 regulated by or receives funds from the commission;

7 (B) directly or indirectly owns or controls more
8 than a 10 percent interest [~~or a pecuniary interest with a value~~
9 ~~exceeding \$10,000~~] in:

10 (i) a business entity or other organization
11 that is regulated by or receives funds from the commission; or

12 (ii) a utility competitor, utility
13 supplier, or other entity affected by a commission decision in a
14 manner other than by the setting of rates for that class of
15 customer;

16 (C) uses or receives a substantial amount of
17 tangible goods, services, or funds from the commission, other than
18 compensation or reimbursement authorized by law for commission
19 membership, attendance, or expenses; or

20 (D) notwithstanding Paragraph (B), has an
21 interest in a mutual fund or retirement fund in which more than 10
22 percent of the fund's holdings at the time of appointment is in a
23 single utility, utility competitor, or utility supplier in this
24 state and the person does not disclose this information to the
25 governor, senate, commission, or other entity, as appropriate.

26 SECTION 1.04. Section 12.154(a), Utilities Code, is amended
27 to read as follows:

1 (a) During the period of service with the commission, a
2 commissioner or commission employee may not:

3 (1) have a pecuniary interest, including an interest
4 as an officer, director, partner, owner, employee, attorney, or
5 consultant, in:

6 (A) a public utility or affiliate; or

7 (B) a person a significant portion of whose
8 business consists of furnishing goods or services to public
9 utilities or affiliates; or

10 (2) ~~[directly or indirectly own or control securities~~
11 ~~in a public utility, affiliate, or direct competitor of a public~~
12 ~~utility; or~~

13 ~~[(3)]~~ accept a gift, gratuity, or entertainment from:

14 (A) a public utility, affiliate, or direct
15 competitor of a public utility;

16 (B) a person a significant portion of whose
17 business consists of furnishing goods or services to public
18 utilities, affiliates, or direct competitors of public utilities;
19 or

20 (C) an agent, representative, attorney,
21 employee, officer, owner, director, or partner of a person
22 described by Paragraph (A) or (B).

23 SECTION 1.05. Section 12.155, Utilities Code, is amended by
24 adding Subsection (d) to read as follows:

25 (d) A commissioner may not be employed by an independent
26 organization certified under Section 39.151. The prohibition under
27 this subsection applies until the second anniversary of the date

1 the commissioner ceases to serve as a commissioner.

2 SECTION 1.06. Chapter 15, Utilities Code, is amended by
3 adding Subchapter D to read as follows:

4 SUBCHAPTER D. CEASE AND DESIST ORDERS

5 Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter
6 applies only to a person to whom Subtitle B applies.

7 Sec. 15.102. RULES. The commission shall adopt rules to
8 implement this subchapter.

9 Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission
10 may proceed solely under this subchapter or under this subchapter
11 in conjunction with other applicable law.

12 Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The
13 commission on its own motion may issue a cease and desist order:

14 (1) after providing notice and an opportunity for a
15 hearing if practicable or without notice or opportunity for a
16 hearing; and

17 (2) if the commission determines that the conduct of a
18 person:

19 (A) poses a threat to continuous and adequate
20 electric service;

21 (B) is hazardous;

22 (C) creates an immediate danger to the public
23 safety; or

24 (D) is causing or can be reasonably expected to
25 cause an immediate injury to a customer of electric services and
26 that the injury is incapable of being repaired or rectified by
27 monetary compensation.

1 (b) The commission by order or rule may delegate to the
2 executive director the authority to issue cease and desist orders
3 under this subchapter.

4 (c) The commission may not issue a cease and desist order to
5 a retail customer under Subsection (a)(2)(A).

6 Sec. 15.105. NOTICE. (a) Notice of a proposed order must
7 be given not later than the 10th day before the date set for a
8 hearing if the commission requires notice and hearing before
9 issuing the order.

10 (b) On issuance of an order under Section 15.104 with or
11 without a hearing, the commission shall serve on the person
12 affected by the order an order that:

13 (1) contains a statement of the charges; and

14 (2) requires the person immediately to cease and
15 desist from the acts, methods, or practices stated in the order.

16 (c) The commission shall serve the order by registered or
17 certified mail, return receipt requested, to the person's last
18 known address.

19 Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,
20 does not apply to the issuance of a cease and desist order under
21 this subchapter without a hearing. A hearing conducted before or
22 after issuance of an order under this subchapter is a contested case
23 under Chapter 2001, Government Code.

24 (b) If the commission issues an order under this subchapter
25 without a hearing, the person affected by the order may request a
26 hearing to affirm, modify, or set aside the order. A request must
27 be submitted not later than the 30th day after the date the person

1 receives the order. The commission shall set the hearing for a date
2 that is:

3 (1) not later than the 10th day after the date the
4 commission receives a request for a hearing; or

5 (2) agreed to by the person and the commission.

6 (c) At or following the hearing, the commission shall wholly
7 or partly affirm, modify, or set aside the order. If the person
8 affected by an order does not request a hearing in the manner
9 provided by Subsection (b) and the commission does not hold a
10 hearing on the order, the order is affirmed without further action
11 by the commission.

12 (d) The commission may hold a hearing under this subchapter
13 or may authorize the State Office of Administrative Hearings to
14 hold the hearing.

15 Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a
16 hearing under this subchapter, an order continues in effect unless
17 the order is stayed by the commission.

18 SECTION 1.07. Subchapter A, Chapter 32, Utilities Code, is
19 amended by adding Section 32.005 to read as follows:

20 Sec. 32.005. STUDY ON CERTAIN BORDER ISSUES. The
21 commission shall conduct a study to determine effective means to
22 promote wholesale sale of electric energy generated in this state
23 for delivery into Mexico. Not later than December 1, 2014, the
24 commission shall issue to the governor, the lieutenant governor,
25 the speaker of the house of representatives, and the standing
26 committees of the senate and the house of representatives that have
27 primary jurisdiction over electric utilities and border issues a

1 written report describing means to promote and encourage such
2 sales. In conducting the study, the commission shall consider ways
3 in which transmission lines may be routed or constructed in a manner
4 least intrusive to recognized historical sites or ranches located
5 less than 150 miles from the international border. The report must
6 include any recommendations the commission considers prudent for
7 legislation to allow or support the identified means. This section
8 expires September 1, 2015.

9 SECTION 1.08. Section 39.107, Utilities Code, is amended by
10 adding Subsection (k) to read as follows:

11 (k) The commission by rule shall prohibit an electric
12 utility or transmission and distribution utility from selling,
13 sharing, or disclosing information generated, provided, or
14 otherwise collected from an advanced metering system or meter
15 information network, including information used to calculate
16 charges for service, historical load data, and any other customer
17 information. The commission shall allow an electric utility or
18 transmission and distribution utility to share information with an
19 affiliated corporation, or other third-party entity, if the
20 information is to be used only for the purpose of providing electric
21 utility service to the customer or other customer-approved
22 services.

23 SECTION 1.09. Section 39.151, Utilities Code, is amended by
24 amending Subsections (d-1) and (e) and adding Subsections (d-2),
25 (d-3), (d-4), and (e-1) to read as follows:

26 (d-1) The commission shall require an independent
27 organization certified by the commission under this section to

submit to the commission the organization's entire proposed annual budget. The commission shall review the proposed budgets either annually or biennially and may approve, disapprove, or modify any item included in a proposed budget. The commission by rule shall establish the type of information or documents needed to effectively evaluate the proposed budget and reasonable dates for the submission of that information or those documents. The commission shall establish a procedure to provide public notice of and public participation in the budget review process.

(d-2) Except as otherwise agreed to by the commission and an independent organization certified by the commission under this section, the organization must submit to the commission for review and approval proposals for obtaining debt financing or for refinancing existing debt. The commission may approve, disapprove, or modify a proposal.

(d-3) An independent organization certified by the commission under this section shall develop proposed performance measures to track the organization's operations. The independent organization must submit the proposed performance measures to the commission for review and approval. The commission shall review the organization's performance as part of the budget review process under Subsection (d-1). The commission shall prepare a report at the time the commission approves the organization's budget detailing the organization's performance and submit the report to the lieutenant governor, the speaker of the house of representatives, and each house and senate standing committee that has jurisdiction over electric utility issues.

1 (d-4) The commission may:

2 (1) require an independent organization to provide
3 reports and information relating to the independent organization's
4 performance of the functions prescribed by this section and
5 relating to the organization's revenues, expenses, and other
6 financial matters;

7 (2) prescribe a system of accounts for an independent
8 organization;

9 (3) conduct audits of an independent organization's
10 performance of the functions prescribed by this section or relating
11 to its revenues, expenses, and other financial matters and may
12 require an independent organization to conduct such an audit;

13 (4) inspect an independent organization's facilities,
14 records, and accounts during reasonable hours and after reasonable
15 notice to the independent organization;

16 (5) assess administrative penalties against an
17 independent organization that violates this title or a rule or
18 order adopted by the commission and, at the request of the
19 commission, the attorney general may apply for a court order to
20 require an independent organization to comply with commission rules
21 and orders in the manner provided by Chapter 15; and

22 (6) resolve disputes between an affected person and an
23 independent organization and adopt procedures for the efficient
24 resolution of such disputes.

25 (e) After approving the budget of an independent
26 organization under Subsection (d-1), the ~~[The]~~ commission shall
27 ~~[may]~~ authorize the ~~[an independent]~~ organization ~~[that is]~~

1 ~~certified under this section]~~ to charge ~~[a reasonable and~~
2 ~~competitively neutral rate]~~ to wholesale buyers and sellers a
3 system administration fee, within a range determined by the
4 commission, that is reasonable and competitively neutral to fund
5 ~~[to cover]~~ the independent organization's approved budget ~~[costs]~~.
6 The commission shall investigate the organization's cost
7 efficiencies, salaries and benefits, and use of debt financing and
8 may require the organization to provide any information needed to
9 effectively evaluate ~~[the organization's budget and]~~ the
10 reasonableness and neutrality of the fee ~~[a rate or proposed rate]~~
11 or to evaluate the effectiveness or efficiency of the
12 organization. The commission shall work with the organization to
13 establish the detail of information, both current and historical,
14 and the time frames the commission needs to effectively evaluate
15 the fee. The commission shall require the organization to closely
16 match actual revenues generated by the fee and other sources of
17 revenue with revenue necessary to fund the budget, taking into
18 account the effect of a fee change on market participants and
19 consumers, to ensure that the budget year does not end with surplus
20 or insufficient funds. The commission shall require the
21 organization to submit to the commission, on a schedule determined
22 by the commission, reports that compare actual expenditures with
23 budgeted expenditures ~~[a rate or a rate request]~~.

24 (e-1) The review and approval of a proposed budget under
25 Subsection (d-1) or a proceeding to authorize and set the range for
26 the amount of a fee under Subsection (e) is not a contested case for
27 purposes of Chapter 2001, Government Code.

SECTION 1.10. Section 39.1515(c), Utilities Code, is amended to read as follows:

(c) The independent organization shall use money from the fee [~~rate~~] authorized by Section 39.151(e) to pay for the market monitor's activities.

SECTION 1.11. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.159 to read as follows:

Sec. 39.159. COST-BENEFIT ANALYSIS OF SIGNIFICANT MARKET CHANGE. (a) In this section, "significant market change" means a change to the electric market that is reasonably expected to add more than \$100 million to annual energy costs to customers in this state.

(b) The commission shall conduct a cost-benefit analysis of a proposed significant market change before authorizing the significant market change. The cost-benefit analysis, to the extent possible, must:

(1) quantify the degree to which the proposed significant market change will result in an increase in:

(A) wholesale electricity prices;
(B) residential electricity prices; and
(C) electricity prices for commercial and industrial customers;

(2) analyze potential adverse effects of the proposed significant market change on retail electric providers; and

(3) compare the potential benefits of the proposed significant market change to the potential economic costs of the proposed change.

1 (c) The commission shall make the cost-benefit analysis
2 available to the public and appropriate state agencies not less
3 than 30 days before the date the commission authorizes the
4 significant market change.

5 SECTION 1.12. Section 39.903(d), Utilities Code, is amended
6 to read as follows:

7 (d) The commission shall annually review and approve system
8 benefit fund accounts, projected revenue requirements, and
9 proposed nonbypassable fees. ~~[The commission shall report to the~~
10 ~~electric utility restructuring legislative oversight committee if~~
11 ~~the system benefit fund fee is insufficient to fund the purposes set~~
12 ~~forth in Subsection (c) to the extent required by this section.]~~

13 SECTION 1.13. Subchapter C, Chapter 52, Utilities Code, is
14 amended by adding Section 52.1035 to read as follows:

15 Sec. 52.1035. RENEWAL OF CERTAIN CERTIFICATES. (a) The
16 commission by rule shall require each holder of a certificate of
17 operating authority and holder of a service provider certificate of
18 operating authority to file with the commission on a one-time or
19 regular basis:

20 (1) the certificate holder's name;
21 (2) the certificate holder's address; and
22 (3) the most recent version of each annual report the
23 commission requires the certificate holder to file under this
24 subtitle.

25 (b) The rules must:

26 (1) require the commission to automatically allow a
27 certificate holder an extension of a filing deadline for the number

1 of days prescribed by the rule, as applicable; and

2 (2) state that the certificate of a holder will not be
3 valid after the last day of the automatic extension period
4 described by Subdivision (1) if the certificate holder does not
5 file information required by the commission under this section by
6 the end of the automatic extension period.

7 (c) A certificate holder whose certificate is no longer
8 valid may obtain a new certificate only by complying with the
9 requirements prescribed for obtaining an original certificate.

10 SECTION 1.14. Section 64.003, Utilities Code, is repealed.

11 SECTION 1.15. The Public Utility Commission of Texas shall
12 adopt rules necessary to implement Section 39.107(k), Utilities
13 Code, as added by this article, as soon as practicable after the
14 effective date of this Act.

15 SECTION 1.16. The Public Utility Commission of Texas shall
16 adopt rules to implement the filing process required by Section
17 52.1035, Utilities Code, as added by this article, as soon as
18 practicable. The rules must specify whether the commission will
19 require that a holder of a certificate of operating authority or
20 holder of a service provider certificate of operating authority
21 file the information required by Section 52.1035, Utilities Code,
22 as added by this article, once or on a regular basis. Regardless of
23 the frequency of filing required, each certificate holder shall
24 file the information required by Section 52.1035, Utilities Code,
25 as added by this article, not later than January 1, 2015. If the
26 commission requires regular filings, the rules must specify the
27 timing of the subsequent filings.

ARTICLE 2. WATER AND SEWER UTILITIES AND OTHER RELATED DUTIES OF
THE PUBLIC UTILITY COMMISSION OF TEXAS

SECTION 2.01. Section 5.013(a), Water Code, is amended to
read as follows:

(a) The commission has general jurisdiction over:

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

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

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

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

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

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

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

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

(9) the administration of the state's programs

1 involving underground water and water wells and drilled and mined
2 shafts;

3 (10) the state's responsibilities relating to regional
4 waste disposal;

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

7 (12) ~~[administration of the state's water rate program~~
8 ~~under Chapter 13 of this code; and~~

9 ~~[(13)]~~ any other areas assigned to the commission by
10 this code and other laws of this state.

11 SECTION 2.02. Section 5.311(a), Water Code, is amended to
12 read as follows:

13 (a) The commission may delegate to an administrative law
14 judge of the State Office of Administrative Hearings the
15 responsibility to hear any matter before the commission ~~[and to~~
16 ~~issue interlocutory orders related to interim rates under Chapter~~
17 ~~13]~~.

18 SECTION 2.03. Section 5.507, Water Code, is amended to read
19 as follows:

20 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
21 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
22 The commission or the Public Utility Commission of Texas may issue
23 an emergency order appointing a willing person to temporarily
24 manage and operate a utility under Section 13.4132. Notice of the
25 action is adequate if the notice is mailed or hand delivered to the
26 last known address of the utility's headquarters.

27 SECTION 2.04. Sections 5.508(a) and (c), Water Code, are

1 amended to read as follows:

2 (a) Notwithstanding the requirements of Section 13.187, the
3 Public Utility Commission of Texas [~~commission~~] may authorize an
4 emergency rate increase for a utility for which a person has been
5 appointed under Section 5.507 or 13.4132 [~~13.412~~] or for which a
6 receiver has been appointed under Section 13.412 [~~13.4132~~] if the
7 increase is necessary to ensure the provision of continuous and
8 adequate services to the utility's customers.

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

17 SECTION 2.05. Section 11.002, Water Code, is amended by
18 adding Subdivision (21) to read as follows:

19 (21) "Utility commission" means the Public Utility
20 Commission of Texas.

21 SECTION 2.06. Section 11.041, Water Code, is amended to
22 read as follows:

23 Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person
24 entitled to receive or use water from any canal, ditch, flume,
25 lateral, dam, reservoir, or lake or from any conserved or stored
26 supply may present to the utility commission a written petition
27 showing:

1 (1) that the person [~~he~~] is entitled to receive or use
2 the water;

3 (2) that the person [~~he~~] is willing and able to pay a
4 just and reasonable price for the water;

5 (3) that the party owning or controlling the water
6 supply has water not contracted to others and available for the
7 petitioner's use; and

8 (4) that the party owning or controlling the water
9 supply fails or refuses to supply the available water to the
10 petitioner, or that the price or rental demanded for the available
11 water is not reasonable and just or is discriminatory.

12 (b) If the petition is accompanied by a deposit of \$25, the
13 executive director of the utility commission shall have a
14 preliminary investigation of the complaint made and determine
15 whether or not there are probable grounds for the complaint.

16 (c) If, after preliminary investigation, the executive
17 director of the utility commission determines that probable grounds
18 exist for the complaint, the utility commission shall enter an
19 order setting a time and place for a hearing on the petition.

20 (d) The utility commission may require the complainant to
21 make an additional deposit or execute a bond satisfactory to the
22 utility commission in an amount fixed by the utility commission
23 conditioned on the payment of all costs of the proceeding.

24 (e) At least 20 days before the date set for the hearing, the
25 utility commission shall transmit by registered mail a certified
26 copy of the petition and a certified copy of the hearing order to
27 the person against whom the complaint is made.

1 (f) The utility commission shall hold a hearing on the
2 complaint at the time and place stated in the order. It may hear
3 evidence orally or by affidavit in support of or against the
4 complaint, and it may hear arguments. The commission may
5 participate in the hearing for the purpose of presenting evidence
6 on the availability of the water requested by the petitioner. On
7 completion of the hearing, the utility commission shall render a
8 written decision.

9 (g) If, after the preliminary investigation, the executive
10 director of the utility commission determines that no probable
11 grounds exist for the complaint, the executive director of the
12 utility commission shall dismiss the complaint. The utility
13 commission may either return the deposit or pay it into the State
14 Treasury.

15 SECTION 2.07. Section 12.013, Water Code, is amended to
16 read as follows:

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

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

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

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

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

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

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

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

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

24 SECTION 2.08. Section 13.002, Water Code, is amended by
25 amending Subdivisions (2) and (18) and adding Subdivision (22-a) to
26 read as follows:

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

1 (A) any person or corporation owning or holding
2 directly or indirectly five percent or more of the voting
3 securities of a utility;

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

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

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

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

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

securities or by any other direct or indirect means; or

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

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

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

SECTION 2.09. Section 13.004, Water Code, is amended to read as follows:

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

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

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and

1 (24).

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

6 SECTION 2.10. Section 13.011, Water Code, is amended to
7 read as follows:

8 Sec. 13.011. EMPLOYEES. (a) The executive director of the
9 utility commission and the executive director of the commission,
10 subject to approval, as applicable, by the utility commission or
11 the commission, shall employ any engineering, accounting, and
12 administrative personnel necessary to carry out each agency's
13 powers and duties under this chapter.

14 (b) The executive director and the commission's staff are
15 responsible for the gathering of information relating to all
16 matters within the jurisdiction of the commission under this
17 subchapter. The executive director of the utility commission and
18 the utility commission's staff are responsible for the gathering of
19 information relating to all matters within the jurisdiction of the
20 utility commission under this subchapter. The duties of the
21 respective executive directors and staffs [~~director and the staff~~]
22 include:

23 (1) accumulation of evidence and other information
24 from water and sewer utilities, [~~and~~] from the agency and governing
25 body, [~~commission and the board~~] and from other sources for the
26 purposes specified by this chapter;

27 (2) preparation and presentation of evidence before

1 the agency [~~commission~~] or its appointed examiner in proceedings;

2 (3) conducting investigations of water and sewer
3 utilities under the jurisdiction of the agency [~~commission~~];

4 (4) preparation of recommendations that the agency
5 [~~commission~~] undertake an investigation of any matter within its
6 jurisdiction;

7 (5) preparation of recommendations and a report for
8 inclusion in the annual report of the agency [~~commission~~];

9 (6) protection and representation of the public
10 interest[~~, together with the public interest advocate,~~] before the
11 agency [~~commission~~]; and

12 (7) other activities that are reasonably necessary to
13 enable the executive director and the staff to perform their
14 duties.

15 SECTION 2.11. Section 13.014, Water Code, is amended to
16 read as follows:

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

21 SECTION 2.12. Subchapter B, Chapter 13, Water Code, is
22 amended by adding Section 13.017 to read as follows:

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

26 (b) The office represents the interests of residential and
27 small commercial consumers under this chapter. The office:

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

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

7 (3) may appear or intervene, as a party or otherwise,
8 as a matter of right on behalf of:

9 (A) residential consumers, as a class, in any
10 proceeding before the utility commission, including an alternative
11 dispute resolution proceeding; and

12 (B) small commercial consumers, as a class, in
13 any proceeding in which the counsellor determines that small
14 commercial consumers are in need of representation, including an
15 alternative dispute resolution proceeding;

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

18 (A) that involves an action taken by an
19 administrative agency in a proceeding, including an alternative
20 dispute resolution proceeding, in which the counsellor is
21 authorized to appear; or

22 (B) in which the counsellor determines that
23 residential consumers or small commercial consumers are in need of
24 representation;

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

1 (6) is entitled to discovery of any nonprivileged
2 matter that is relevant to the subject matter of a proceeding or
3 petition before the utility commission;

4 (7) may represent an individual residential or small
5 commercial consumer with respect to the consumer's disputed
6 complaint concerning retail utility services that is unresolved
7 before the utility commission; and

8 (8) may recommend legislation to the legislature that
9 the office determines would positively affect the interests of
10 residential and small commercial consumers.

11 (c) This section does not limit the authority of the utility
12 commission to represent residential or small commercial consumers.

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

17 SECTION 2.13. Section 13.041, Water Code, is amended to
18 read as follows:

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

1 convenient to the exercise of these powers [~~this power~~] and
2 jurisdiction. The utility commission may consult with the
3 commission as necessary in carrying out its duties related to the
4 regulation of water and sewer utilities.

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

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

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

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

25 (1) to compel a water or sewer service provider that
26 has obtained or is required to obtain a certificate of public
27 convenience and necessity to provide continuous and adequate water

1 service, sewer service, or both, if the discontinuance of the
2 service is imminent or has occurred because of the service
3 provider's actions or failure to act; and

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

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

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

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

23 SECTION 2.14. Section 13.042, Water Code, is amended to
24 read as follows:

25 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND
26 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the
27 limitations imposed in this chapter and for the purpose of

1 regulating rates and services so that those rates may be fair, just,
2 and reasonable and the services adequate and efficient, the
3 governing body of each municipality has exclusive original
4 jurisdiction over all water and sewer utility rates, operations,
5 and services provided by a water and sewer utility within its
6 corporate limits.

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

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

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

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

1 (f) This subchapter does not give the utility commission
2 power or jurisdiction to regulate or supervise the rates or service
3 of a utility owned and operated by a municipality, directly or
4 through a municipally owned corporation, within its corporate
5 limits or to affect or limit the power, jurisdiction, or duties of a
6 municipality that regulates land and supervises water and sewer
7 utilities within its corporate limits, except as provided by this
8 code.

9 SECTION 2.15. Sections 13.043(a), (b), (c), (e), (f), (g),
10 (h), and (j), Water Code, are amended to read as follows:

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

1 and evidence of reasonable expenses incurred in the appeal
2 proceedings.

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

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

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

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

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

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

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

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

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

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

1 the date of notice of the decision is received from the provider of
2 water or sewer service by the filing of a petition by the retail
3 public utility.

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

26 (h) The utility commission may, on a motion by the executive
27 director of the utility commission or by the appellant under

1 Subsection (a), (b), or (f) [~~of this section~~], establish interim
2 rates to be in effect until a final decision is made.

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

14 SECTION 2.16. Section 13.044(b), Water Code, is amended to
15 read as follows:

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

24 SECTION 2.17. Section 13.046, Water Code, is amended to
25 read as follows:

26 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR
27 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The

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

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

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

25 SECTION 2.18. Section 13.081, Water Code, is amended to
26 read as follows:

27 Sec. 13.081. FRANCHISES. This chapter may not be construed

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

10 SECTION 2.19. Section 13.082, Water Code, is amended to
11 read as follows:

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

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

limits apply unless the municipality adopts its own rules.

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

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

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

SECTION 2.20. Section 13.085, Water Code, is amended to read as follows:

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

witnesses and otherwise providing evidence.

SECTION 2.21. Section 13.087(c), Water Code, is amended to read as follows:

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

SECTION 2.22. Sections 13.131(a), (b), (c), and (e), Water Code, are amended to read as follows:

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

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the

1 systems and forms established by a federal agency for that utility
2 or class of utilities.

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

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

22 SECTION 2.23. Section 13.132, Water Code, is amended to
23 read as follows:

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

26 (1) require that water and sewer utilities report to
27 it any information relating to themselves and affiliated interests

both inside and outside this state that it considers useful in the administration of this chapter;

(2) establish forms for all reports;

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

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

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

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

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

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

SECTION 2.24. Section 13.1325, Water Code, is amended to read as follows:

Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On request, the utility commission [~~state agency with jurisdiction~~

1 ~~over rates charged by water and sewer utilities]~~ shall provide, at a
2 reasonable cost, electronic copies of all information provided to
3 the utility commission [~~agency~~] under Sections 13.016, 13.043, and
4 13.187 to the extent that the information is available and is not
5 confidential. Copies of all information provided to the utility
6 commission [~~agency~~] shall be provided to the Office of Public
7 Utility Counsel, on request, at no cost to the office.

8 SECTION 2.25. Section 13.133(b), Water Code, is amended to
9 read as follows:

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

17 SECTION 2.26. Sections 13.136(b) and (c), Water Code, are
18 amended to read as follows:

19 (b) Each utility annually shall file a service and financial
20 report in a form and at times specified by utility commission rule.

21 (c) Every water supply or sewer service corporation shall
22 file with the utility commission tariffs showing all rates that are
23 subject to the appellate jurisdiction of the utility commission and
24 that are in force at the time for any utility service, product, or
25 commodity offered. Every water supply or sewer service corporation
26 shall file with and as a part of those tariffs all rules and
27 regulations relating to or affecting the rates, utility service,

product, or commodity furnished. The filing required under this subsection shall be for informational purposes only.

SECTION 2.27. Section 13.137, Water Code, is amended to read as follows:

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

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

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

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

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

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

(c) Books, accounts, records, or memoranda required by the

1 regulatory authority to be kept in the state may not be removed from
2 the state, except on conditions prescribed by the utility
3 commission.

4 SECTION 2.28. Section 13.139(b), Water Code, is amended to
5 read as follows:

6 (b) The governing body of a municipality, as the regulatory
7 authority for public utilities operating within its corporate
8 limits, and the utility commission or the commission as the
9 regulatory authority for public utilities operating outside the
10 corporate limits of any municipality, after reasonable notice and
11 hearing on its own motion, may:

12 (1) ascertain and fix just and reasonable standards,
13 classifications, regulations, service rules, minimum service
14 standards or practices to be observed and followed with respect to
15 the service to be furnished;

16 (2) ascertain and fix adequate and reasonable
17 standards for the measurement of the quantity, quality, pressure,
18 or other condition pertaining to the supply of the service;

19 (3) prescribe reasonable regulations for the
20 examination and testing of the service and for the measurement of
21 service; and

22 (4) establish or approve reasonable rules,
23 regulations, specifications, and standards to secure the accuracy
24 of all meters, instruments, and equipment used for the measurement
25 of any utility service.

26 SECTION 2.29. Section 13.1395, Water Code, is amended by
27 adding Subsection (m) to read as follows:

1 (m) The commission shall coordinate with the utility
2 commission in the administration of this section.

3 SECTION 2.30. Sections 13.1396(b), (c), and (f), Water
4 Code, are amended to read as follows:

5 (b) An affected utility shall submit to the office of
6 emergency management of each county in which the utility has more
7 than one customer, the utility commission [~~Public Utility~~
8 ~~Commission of Texas~~], and the office of emergency management of the
9 governor a copy of:

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

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

14 (c) Each affected utility shall submit to the utility
15 commission, each electric utility that provides transmission and
16 distribution service to the affected utility, each retail electric
17 provider that sells electric power to the affected utility, the
18 office of emergency management of each county in which the utility
19 has water and wastewater facilities that qualify for critical load
20 status under rules adopted by the utility commission [~~Public~~
21 ~~Utility Commission of Texas, the Public Utility Commission of~~
22 ~~Texas~~], and the division of emergency management of the governor:

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

26 (2) emergency contact information for the affected
27 utility, including:

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

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

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

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

11 SECTION 2.31. Section 13.142(b), Water Code, is amended to
12 read as follows:

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

16 SECTION 2.32. Section 13.144, Water Code, is amended to
17 read as follows:

18 Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A
19 district or authority created under Section 52, Article III, or
20 Section 59, Article XVI, Texas Constitution, a retail public
21 utility, a wholesale water service, or other person providing a
22 retail public utility with a wholesale water supply shall provide
23 the utility commission and the commission with a certified copy of
24 any wholesale water supply contract with a retail public utility
25 within 30 days after the date of the execution of the contract. The
26 submission must include the amount of water being supplied, term of
27 the contract, consideration being given for the water, purpose of

1 use, location of use, source of supply, point of delivery,
2 limitations on the reuse of water, a disclosure of any affiliated
3 interest between the parties to the contract, and any other
4 condition or agreement relating to the contract.

5 SECTION 2.33. Section 13.147(a), Water Code, is amended to
6 read as follows:

7 (a) A retail public utility providing water service may
8 contract with a retail public utility providing sewer service to
9 bill and collect the sewer service provider's fees and payments as
10 part of a consolidated process with the billing and collection of
11 the water service provider's fees and payments. The water service
12 provider may provide that service only for customers who are served
13 by both providers in an area covered by both providers'
14 certificates of public convenience and necessity. If the water
15 service provider refuses to enter into a contract under this
16 section or if the water service provider and sewer service provider
17 cannot agree on the terms of a contract, the sewer service provider
18 may petition the utility commission to issue an order requiring the
19 water service provider to provide that service.

20 SECTION 2.34. Section 13.181(b), Water Code, is amended to
21 read as follows:

22 (b) Subject to this chapter, the utility commission has all
23 authority and power of the state to ensure compliance with the
24 obligations of utilities under this chapter. For this purpose the
25 regulatory authority may fix and regulate rates of utilities,
26 including rules and regulations for determining the classification
27 of customers and services and for determining the applicability of

1 rates. A rule or order of the regulatory authority may not conflict
2 with the rulings of any federal regulatory body. The utility
3 commission may adopt rules which authorize a utility which is
4 permitted under Section 13.242(c) to provide service without a
5 certificate of public convenience and necessity to request or
6 implement a rate increase and operate according to rules,
7 regulations, and standards of service other than those otherwise
8 required under this chapter provided that rates are just and
9 reasonable for customers and the utility and that service is safe,
10 adequate, efficient, and reasonable.

11 SECTION 2.35. Sections 13.182(c) and (d), Water Code, are
12 amended to read as follows:

13 (c) For ratemaking purposes, the utility commission may
14 treat two or more municipalities served by a utility as a single
15 class wherever the utility commission considers that treatment to
16 be appropriate.

17 (d) The utility commission by rule shall establish a
18 preference that rates under a consolidated tariff be consolidated
19 by region. The regions under consolidated tariffs must be
20 determined on a case-by-case basis.

21 SECTION 2.36. Section 13.183(d), Water Code, is amended to
22 read as follows:

23 (d) A regulatory authority other than the utility
24 commission may not approve an acquisition adjustment for a system
25 purchased before the effective date of an ordinance authorizing
26 acquisition adjustments.

27 SECTION 2.37. Section 13.184(a), Water Code, is amended to

1 read as follows:

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

16 SECTION 2.38. Sections 13.187(d), (k), and (o), Water Code,
17 are amended to read as follows:

18 (d) Except as provided by Subsection (d-1), if the
19 application or the statement of intent is not substantially
20 complete or does not comply with the regulatory authority's rules,
21 it may be rejected and the effective date of the rate change may be
22 suspended until a properly completed application is accepted by the
23 regulatory authority and a proper statement of intent is provided.
24 The utility commission may also suspend the effective date of any
25 rate change if the utility does not have a certificate of public
26 convenience and necessity or a completed application for a
27 certificate or to transfer a certificate pending before the utility

1 commission or if the utility is delinquent in paying the assessment
2 and any applicable penalties or interest required by Section
3 5.701(n) [~~of this code~~].

4 (k) If the regulatory authority receives at least the number
5 of complaints from ratepayers required for the regulatory authority
6 to set a hearing under Subsection (e), the regulatory authority
7 may, pending the hearing and a decision, suspend the date the rate
8 change would otherwise be effective. Except as provided by
9 Subsection (d-1), the proposed rate may not be suspended for longer
10 than:

11 (1) 90 days by a local regulatory authority; or

12 (2) 150 days by the utility commission.

13 (o) If a regulatory authority other than the utility
14 commission establishes interim rates or an escrow account, the
15 regulatory authority must make a final determination on the rates
16 not later than the first anniversary of the effective date of the
17 interim rates or escrowed rates or the rates are automatically
18 approved as requested by the utility.

19 SECTION 2.39. Sections 13.188(a) and (b), Water Code, are
20 amended to read as follows:

21 (a) Notwithstanding any other provision in this chapter,
22 the utility commission by rule shall adopt a procedure allowing a
23 utility to file with the utility commission an application to
24 timely adjust the utility's rates to reflect an increase or
25 decrease in documented energy costs in a pass through clause. The
26 utility commission, by rule, shall require the pass through of
27 documented decreases in energy costs within a reasonable time. The

1 pass through, whether a decrease or increase, shall be implemented
2 on no later than an annual basis, unless the utility commission
3 determines a special circumstance applies.

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

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

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

12 SECTION 2.40. Sections 13.241(a), (d), and (e), Water Code,
13 are amended to read as follows:

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

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

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

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

7 SECTION 2.41. Sections 13.242(a) and (c), Water Code, are
8 amended to read as follows:

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

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

1 if the utility or water supply corporation has less than 15
2 potential connections and is not within the certificated area of
3 another retail public utility.

4 SECTION 2.42. Section 13.244, Water Code, is amended to
5 read as follows:

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

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

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

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

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

27 (A) a metes and bounds survey certified by a

1 licensed state land surveyor or a registered professional land
2 surveyor;

3 (B) the Texas State Plane Coordinate System;

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

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

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

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

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

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

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

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

21 (A) at least 50 acres; and

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

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

25 SECTION 2.43. Sections 13.245(b), (c), (c-1), (c-2), (c-3),
26 and (e), Water Code, are amended to read as follows:

27 (b) Except as provided by Subsections (c), (c-1), and (c-2),

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

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

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

18 (c-1) If a municipality has not consented under Subsection
19 (b) before the 180th day after the date a landowner or a retail
20 public utility submits to the municipality a formal request for
21 service according to the municipality's application requirements
22 and standards for facilities on the same or substantially similar
23 terms as provided by the retail public utility's application to the
24 utility commission, including a capital improvements plan required
25 by Section 13.244(d)(3) or a subdivision plat, the utility
26 commission may grant the certificate of public convenience and
27 necessity without the consent of the municipality if:

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

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

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

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

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

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

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

26 (e) If the utility commission makes a decision under
27 Subsection (d) regarding the grant of a certificate of public

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

7 SECTION 2.44. Sections 13.2451(b) and (c), Water Code, are
8 amended to read as follows:

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

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

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

27 (2) in relation to which the municipality has spent

1 public funds.

2 SECTION 2.45. Section 13.246, Water Code, is amended to
3 read as follows:

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

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

27 (1) Section 13.248 or 13.255; or

1 (2) Chapter 65.

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

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

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

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

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

25 (4) the ability of the applicant to provide adequate
26 service, including meeting the standards of the commission, taking
27 into consideration the current and projected density and land use

1 of the area;

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

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

8 (7) environmental integrity;

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

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

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

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

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

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

25 (f) If two or more retail public utilities or water supply
26 or sewer service corporations apply for a certificate of public
27 convenience and necessity to provide water or sewer utility service

1 to an uncertificated area located in an economically distressed
2 area and otherwise meet the requirements for obtaining a new
3 certificate, the utility commission shall grant the certificate to
4 the retail public utility or water supply or sewer service
5 corporation that is more capable financially, managerially, and
6 technically of providing continuous and adequate service.

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

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

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

9 SECTION 2.46. Section 13.247(a), Water Code, is amended to
10 read as follows:

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

25 SECTION 2.47. Section 13.248, Water Code, is amended to
26 read as follows:

27 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts

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

6 SECTION 2.48. Sections 13.250(b), (c), and (e), Water Code,
7 are amended to read as follows:

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

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

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

23 (3) nonuse; or

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

26 (c) Any discontinuance, reduction, or impairment of
27 service, whether with or without approval of the utility

1 commission, shall be in conformity with and subject to conditions,
2 restrictions, and limitations that the utility commission
3 prescribes.

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

7 SECTION 2.49. Section 13.2502(d), Water Code, is amended to
8 read as follows:

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

11 SECTION 2.50. Section 13.251, Water Code, is amended to
12 read as follows:

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

23 SECTION 2.51. Section 13.252, Water Code, is amended to
24 read as follows:

25 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.
26 If a retail public utility in constructing or extending a line,
27 plant, or system interferes or attempts to interfere with the

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

10 SECTION 2.52. Section 13.253, Water Code, is amended to
11 read as follows:

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

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

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

25 (B) develop, implement, and follow financial,
26 managerial, and technical practices that are acceptable to the
27 utility commission to ensure that continuous and adequate service

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

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

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

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

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

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

13 SECTION 2.53. Sections 13.254(a), (a-1), (a-2), (a-3),
 14 (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h),
 15 Water Code, are amended to read as follows:

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

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

24 (2) in an affected county as defined in Section
 25 16.341, the cost of providing service by the certificate holder is
 26 so prohibitively expensive as to constitute denial of service,
 27 provided that, for commercial developments or for residential

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

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

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

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

1 the certificate holder, who may submit information to the utility
2 commission to controvert information submitted by the petitioner.
3 The petitioner must demonstrate that:

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

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

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

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

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

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

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

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

24 (3) the certificate holder:

25 (A) has refused to provide the service;

26 (B) is not capable of providing the service on a
27 continuous and adequate basis within the timeframe, at the level,

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

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

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

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

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

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

26 (a-3) Within 60 calendar days from the date the utility
27 commission determines the petition filed pursuant to Subsection

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

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

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

27 (a-8) If a certificate holder has never made service

1 available through planning, design, construction of facilities, or
2 contractual obligations to serve the area a petitioner seeks to
3 have released under Subsection (a-1), the utility commission is not
4 required to find that the proposed alternative provider is capable
5 of providing better service than the certificate holder, but only
6 that the proposed alternative provider is capable of providing the
7 requested service.

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

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

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

24 (e) The determination of the monetary amount of
25 compensation, if any, shall be determined at the time another
26 retail public utility seeks to provide service in the previously
27 decertified area and before service is actually provided. The

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

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

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

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

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

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

25 SECTION 2.54. Sections 13.255(a), (b), (c), (d), (e),
26 (g-1), (k), (l), and (m), Water Code, are amended to read as
27 follows:

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

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

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

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

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

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

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

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

27 (e) Any party that is aggrieved by a final order of the

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

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

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

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

26 (k) The following conditions apply when a municipality or
27 franchised utility makes an application to acquire the service area

1 or facilities of a retail public utility described in Subsection
2 (j)(2):

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

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

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

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

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

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

20 SECTION 2.55. Section 13.2551, Water Code, is amended to
21 read as follows:

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

26 (1) the retail public utility seeking to provide
27 service to a decertified area to serve the entire service area of

1 the retail public utility that is being decertified; and

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

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

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

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

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

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

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

4 SECTION 2.56. Sections 13.257(e), (i), (r), and (s), Water
5 Code, are amended to read as follows:

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

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

27 (A) the utility service provider did not file the

1 map of the certificated service area in the real property records of
2 the county in which the service area is located and with the utility
3 commission depicting the boundaries of the service area of the
4 utility service provider as shown in the real property records of
5 the county in which the service area is located; and

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

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

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

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

4 (r) A utility service provider shall:

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

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

14 (B) the Texas State Plane Coordinate System;

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

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

19 (2) submit to the executive director of the utility
20 commission evidence of the recording.

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

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

4 SECTION 2.57. Sections 13.301(a), (b), (c), (d), (e), (f),
5 and (g), Water Code, are amended to read as follows:

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

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

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

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

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

1 service is provided.

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

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

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

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

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

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

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

27 (4) the person purchasing or acquiring the water or

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

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

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

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

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

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

22 SECTION 2.58. Section 13.302, Water Code, is amended to
23 read as follows:

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

1 state unless the person or utility files a written application with
2 the utility commission not later than the 61st day before the date
3 on which the transaction is to occur.

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

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

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

18 (e) Unless the executive director of the utility commission
19 requests that a public hearing be held, the purchase or acquisition
20 may be completed as proposed:

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

22 (2) at any time after the executive director of the
23 utility commission notifies the person or utility that a hearing
24 will not be requested.

25 (f) If a hearing is requested or if the person or utility
26 fails to make the application to the utility commission as
27 required, the purchase or acquisition may not be completed unless

1 the utility commission determines that the proposed transaction
2 serves the public interest. A purchase or acquisition that is not
3 completed in accordance with the provisions of this section is
4 void.

5 SECTION 2.59. Section 13.303, Water Code, is amended to
6 read as follows:

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

13 SECTION 2.60. Section 13.304, Water Code, is amended to
14 read as follows:

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

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

27 (c) The financial institution may operate the utility for an

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

7 SECTION 2.61. Section 13.341, Water Code, is amended to
8 read as follows:

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

17 SECTION 2.62. Section 13.342, Water Code, is amended to
18 read as follows:

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

25 SECTION 2.63. Section 13.343(a), Water Code, is amended to
26 read as follows:

27 (a) The owner of a utility that supplies retail water

1 service may not contract to purchase from an affiliated supplier
2 wholesale water service for any of that owner's systems unless:

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

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

9 SECTION 2.64. Section 13.381, Water Code, is amended to
10 read as follows:

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

14 SECTION 2.65. Section 13.382(a), Water Code, is amended to
15 read as follows:

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

24 SECTION 2.66. Section 13.411, Water Code, is amended to
25 read as follows:

26 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)
27 If the utility commission or the commission has reason to believe

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

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

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

26 SECTION 2.67. Section 13.4115, Water Code, is amended to
27 read as follows:

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

11 SECTION 2.68. Sections 13.412(a), (f), and (g), Water Code,
12 are amended to read as follows:

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

17 (1) has abandoned operation of its facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 SECTION 2.69. Section 13.413, Water Code, is amended to
26 read as follows:

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

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

- 7 (1) payment of fees to the receiver for his services;
- 8 (2) payment of fees to attorneys, accountants,
9 engineers, or any other person or entity that provides goods or
10 services necessary to the operation of the receivership; and
- 11 (3) payment of costs incurred in ensuring that any
12 property owned or controlled by a water or sewer utility is not used
13 in violation of a final order of the utility commission or the
14 commission.

15 SECTION 2.70. Section 13.4131, Water Code, is amended to
16 read as follows:

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

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

- 27 (1) management requirements;

(2) additional reporting requirements;

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

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

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

SECTION 2.71. Sections 13.4132(a), (b), and (d), Water Code, are amended to read as follows:

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

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

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

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

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

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

6 SECTION 2.72. Sections 13.4133(a) and (c), Water Code, are
7 amended to read as follows:

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

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

24 SECTION 2.73. Sections 13.414(a) and (c), Water Code, are
25 amended to read as follows:

26 (a) Any retail public utility or affiliated interest that
27 violates this chapter, fails to perform a duty imposed on it, or

1 fails, neglects, or refuses to obey an order, rule, direction, or
2 requirement of the utility commission or the commission or decree
3 or judgment of a court is subject to a civil penalty of not less than
4 \$100 nor more than \$5,000 for each violation.

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

9 SECTION 2.74. Sections 13.4151(a), (b), (c), (d), (e), (f),
10 (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as
11 follows:

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

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

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

24 (2) with respect to the alleged violator:

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

27 (B) the degree of culpability, including whether

1 the violation was attributable to mechanical or electrical failures
2 and whether the violation could have been reasonably anticipated
3 and avoided;

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

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

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

11 (3) any other matters that justice requires.

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

26 (d) Not later than the 10th day after the date on which the
27 report is issued, the executive director of the utility commission

1 or the executive director of the commission shall give written
 2 notice of the report to the person, affiliated interest, or retail
 3 public utility charged with the violation. The notice shall
 4 include a brief summary of the charges, a statement of the amount of
 5 the penalty recommended, and a statement of the right of the person,
 6 affiliated interest, or retail public utility charged to a hearing
 7 on the occurrence of the violation, the amount of the penalty, or
 8 both.

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

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

26 (g) If the person, affiliated interest, or retail public
 27 utility charged requests or the utility commission or the

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

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

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

1 (1) pay the penalty in full; or

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

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

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

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

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

24 (m) Notwithstanding any other provision of law, the agency
25 [~~commission~~] may compromise, modify, extend the time for payment
26 of, or remit, with or without condition, any penalty imposed under
27 this section.

SECTION 2.75. Section 13.417, Water Code, is amended to read as follows:

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

SECTION 2.76. Section 13.418, Water Code, is amended to read as follows:

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

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

SECTION 2.77. Section 13.501(7), Water Code, is amended to read as follows:

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

SECTION 2.78. Section 13.502(e), Water Code, is amended to read as follows:

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

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

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

SECTION 2.79. Sections 13.503(a), (b), and (e), Water Code, are amended to read as follows:

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

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

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

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

22 SECTION 2.80. Section 13.5031, Water Code, is amended to
 23 read as follows:

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

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

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

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

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

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

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

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

5 SECTION 2.81. Section 13.505, Water Code, is amended to
6 read as follows:

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

22 SECTION 2.82. Section 13.512, Water Code, is amended to
23 read as follows:

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

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

7 SECTION 2.83. Section 13.513, Water Code, is amended to
8 read as follows:

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

24 SECTION 2.84. Section 49.352(c), Water Code, is amended to
25 read as follows:

26 (c) For purposes of this section, a municipality may obtain
27 single certification in the manner provided by Section 13.255,

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

5 SECTION 2.85. Section 552.047(e), Local Government Code, is
6 amended to read as follows:

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

12 SECTION 2.86. Section 7201.004(b), Special District Local
13 Laws Code, is amended to read as follows:

14 (b) This section does not apply to:

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

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

21 SECTION 2.87. Section 7201.005(c), Special District Local
22 Laws Code, is amended to read as follows:

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

1 district.

2 SECTION 2.88. Section 7201.102, Special District Local Laws
3 Code, is amended to read as follows:

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

11 SECTION 2.89. Section 8363.106(b), Special District Local
12 Laws Code, is amended to read as follows:

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

24 SECTION 2.90. Section 8363.251(a), Special District Local
25 Laws Code, is amended to read as follows:

26 (a) The city may dissolve the district by ordinance after
27 provision is made for all debts incurred by the district if one or

1 more of the following does not occur:

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

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

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

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

21 SECTION 2.91. Section 8801.201, Special District Local Laws
22 Code, is amended to read as follows:

23 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A person
24 who is required to convert to surface water under this chapter and
25 who purchases that water supply wholesale from a political
26 subdivision as defined by Section 12.013(b), Water Code, may appeal
27 to the Public Utility Commission of Texas [~~commission~~] the rates

the political subdivision charges to the person. Chapter 12, Water Code, and rules adopted under that chapter apply to an appeal under this section.

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

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

SECTION 2.92. Section 8803.151(1), Special District Local Laws Code, is amended to read as follows:

(1) "Commission" means the Public Utility Commission of Texas [~~Commission on Environmental Quality~~].

SECTION 2.93. Section 8808.151(1), Special District Local Laws Code, is amended to read as follows:

(1) "Commission" means the Public Utility Commission of Texas [~~Commission on Environmental Quality~~].

SECTION 2.94. (a) On September 1, 2014, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer service, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapters 11, 12, and 13, Water Code, as provided by this Act;

1 (2) any obligations and contracts of the Texas
2 Commission on Environmental Quality that are directly related to
3 implementing a power, duty, function, program, or activity
4 transferred under this article; and

5 (3) all property and records in the custody of the
6 Texas Commission on Environmental Quality that are related to a
7 power, duty, function, program, or activity transferred under this
8 article and all funds appropriated by the legislature for that
9 power, duty, function, program, or activity.

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

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

15 (2) establishes a plan for the identification and
16 transfer of the records, personnel, property, and unspent
17 appropriations of the Texas Commission on Environmental Quality
18 that are used for purposes of the commission's powers and duties
19 directly related to the economic regulation of water and sewer
20 service under Chapters 11, 12, and 13, Water Code, as amended by
21 this article; and

22 (3) establishes a plan for the transfer of all pending
23 applications, hearings, rulemaking proceedings, and orders
24 relating to the economic regulation of water and sewer service
25 under Chapters 11, 12, and 13, Water Code, as amended by this
26 article, from the Texas Commission on Environmental Quality to the
27 Public Utility Commission of Texas.

1 (c) The memorandum of understanding under this section is
2 not required to be adopted by rule under Section 5.104, Water Code.

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

12 (e) The Texas Commission on Environmental Quality and the
13 Public Utility Commission of Texas shall appoint a transition team
14 to accomplish the purposes of this section. The transition team
15 shall establish guidelines on how the two agencies will cooperate
16 regarding:

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

25 (f) A rule, form, policy, procedure, or decision of the
26 Texas Commission on Environmental Quality related to a power, duty,
27 function, program, or activity transferred under this article

1 continues in effect as a rule, form, policy, procedure, or decision
2 of the Public Utility Commission of Texas and remains in effect
3 until amended or replaced by that agency.

4 (g) The memorandum required by this section must be
5 completed by August 1, 2014.

6 (h) The Public Utility Commission of Texas and the Texas
7 Commission on Environmental Quality shall adopt rules to implement
8 the changes in law made by this Act to Chapter 13, Water Code, not
9 later than February 1, 2015.

10 SECTION 2.95. (a) The Public Utility Commission of Texas
11 shall conduct a comparative analysis of the ratemaking authority of
12 the commission before the effective date of this Act and the
13 ratemaking authority of the commission after the transition
14 described in Section 2.94 of this article, to identify potential
15 for procedural standardization. The Public Utility Commission of
16 Texas shall issue a report of the analysis, with recommendations
17 regarding rate standardization, for consideration by the 84th
18 Legislature.

19 (b) The Public Utility Commission of Texas shall prepare a
20 report describing staffing changes related to the transition
21 described in Section 2.94 of this article, including reductions in
22 staff that the commission may realize as a result of consolidated
23 functions. The Public Utility Commission of Texas shall submit the
24 report to the Legislative Budget Board and the governor with the
25 legislative appropriations request for the 2016-2017 biennium.

26 SECTION 2.96. (a) On September 1, 2014, the following are
27 transferred from the office of public interest counsel of the Texas

1 Commission on Environmental Quality to the Office of Public Utility
2 Counsel:

3 (1) the powers, duties, functions, programs, and
4 activities of the office of public interest counsel of the Texas
5 Commission on Environmental Quality relating to the representation
6 of the public interest in matters related to the economic
7 regulation of water and sewer service under Chapters 11, 12, and 13,
8 Water Code, as amended by this article;

9 (2) any obligations and contracts of the office of
10 public interest counsel of the Texas Commission on Environmental
11 Quality that are directly related to implementing a power, duty,
12 function, program, or activity transferred under this article; and

13 (3) all property and records in the custody of the
14 office of public interest counsel of the Texas Commission on
15 Environmental Quality that are related to a power, duty, function,
16 program, or activity transferred under this article and all funds
17 appropriated by the legislature for that power, duty, function,
18 program, or activity.

19 (b) The office of public interest counsel of the Texas
20 Commission on Environmental Quality and the Office of Public
21 Utility Counsel shall enter into a memorandum of understanding
22 that:

23 (1) identifies in detail the applicable powers and
24 duties that are transferred by this article; and

25 (2) establishes a plan for the identification and
26 transfer of the records, personnel, property, and unspent
27 appropriations of the Texas Commission on Environmental Quality

1 that are used for purposes of the office of public interest
2 counsel's powers and duties directly related to the representation
3 of the public interest in matters relating to the economic
4 regulation of water and sewer service under Chapters 11, 12, and 13,
5 Water Code, as amended by this article.

6 (c) The memorandum of understanding under this section is
7 not required to be adopted by rule under Section 5.104, Water Code.

8 (d) The office of public interest counsel of the Texas
9 Commission on Environmental Quality and the Office of Public
10 Utility Counsel may agree in the memorandum of understanding under
11 this section to transfer to the Office of Public Utility Counsel any
12 personnel of the office of public interest counsel whose functions
13 predominantly involve powers, duties, obligations, functions, and
14 activities related to the representation of the public interest in
15 matters relating to the economic regulation of water and sewer
16 service under Chapters 11, 12, and 13, Water Code, as amended by
17 this article.

18 (e) The office of public interest counsel of the Texas
19 Commission on Environmental Quality and the Office of Public
20 Utility Counsel shall appoint a transition team to accomplish the
21 purposes of this section.

22 (f) A rule, form, policy, procedure, or decision of the
23 office of public interest counsel of the Texas Commission on
24 Environmental Quality related to a power, duty, function, program,
25 or activity transferred under this article continues in effect as a
26 rule, form, policy, procedure, or decision of the Office of Public
27 Utility Counsel and remains in effect until amended or replaced by

1 that agency.

2 (g) The memorandum required by this section must be
3 completed by August 1, 2014.

4 (h) The Office of Public Utility Counsel and the office of
5 public interest counsel of the Texas Commission on Environmental
6 Quality shall adopt rules to implement the changes in law made by
7 this article to Chapter 13, Water Code, not later than February 1,
8 2015.

9 SECTION 2.97. The Office of Public Utility Counsel shall
10 prepare a report describing staffing changes related to the
11 transition described in Section 2.96 of this article, including
12 reductions in staff that the office may realize as a result of
13 consolidated functions. The Office of Public Utility Counsel shall
14 submit the report to the Legislative Budget Board and the governor
15 with the legislative appropriations request for the 2016-2017
16 biennium.

17 ARTICLE 3. INTERIM STUDY FOR EVALUATION OF THE POSITION OF
18 COMMISSIONER OF THE PUBLIC UTILITY COMMISSION OF TEXAS

19 SECTION 3.01. (a) A joint committee shall conduct a study
20 to evaluate whether the Public Utility Commission of Texas should
21 continue to have three commissioners and the best method of
22 selecting the appropriate number of commissioners.

23 (b) The committee is composed of eight members appointed as
24 follows:

25 (1) four members of the senate appointed by the
26 lieutenant governor; and

27 (2) four members of the house of representatives

1 appointed by the speaker of the house of representatives.

2 (c) The speaker of the house of representatives and the
3 lieutenant governor shall jointly designate a chair or,
4 alternatively, designate two co-chairs from among the committee
5 membership.

6 (d) The committee shall:

7 (1) examine the appropriate number of commissioners,
8 with specific emphasis on whether the number of commissioners on
9 the Public Utility Commission of Texas should be reduced to one; and

10 (2) examine whether the appropriate number of
11 commissioners should be appointed or elected.

12 (e) The committee may adopt rules necessary to carry out the
13 committee's duties under this section.

14 (f) Except as otherwise specifically provided by this
15 section, the committee may operate in the same manner as a joint
16 committee of the 83rd Legislature.

17 (g) Not later than December 1, 2014, the committee shall
18 report to the governor and the legislature any recommendations
19 developed by the committee under this section.

20 ARTICLE 4. EFFECTIVE DATE

21 SECTION 4.01. This Act takes effect September 1, 2013.

ADOPTED

APR 23 2013

Larry Saw
Secretary of the Senate

By:

R. A. Lee

H.B. No. 1600

Substitute the following for H.B. No. 1600:

By:

W. P. E. Lee

C.S. H.B. No. 1600

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the continuation and functions of the Public Utility
3 Commission of Texas, to the transfer of certain functions from the
4 Texas Commission on Environmental Quality to the Public Utility
5 Commission of Texas, to the rates for water service, and to the
6 functions of the Office of Public Utility Counsel; authorizing a
7 fee.

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

9 ARTICLE 1. GENERAL PROVISIONS RELATING TO THE PUBLIC UTILITY

10

COMMISSION OF TEXAS

11 SECTION 1.01. Section 12.005, Utilities Code, is amended to
12 read as follows:

13 Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility
14 Commission of Texas is subject to Chapter 325, Government Code
15 (Texas Sunset Act). Unless continued in existence as provided by
16 that chapter or by Chapter 39, the commission is abolished and this
17 title expires September 1, 2023 [~~2013~~].

18 SECTION 1.02. Section 12.155, Utilities Code, is amended by
19 adding Subsection (d) to read as follows:

20 (d) A commissioner may not be employed by an independent
21 organization certified under Section 39.151. The prohibition under
22 this subsection applies until the second anniversary of the date
23 the commissioner ceases to serve as a commissioner.

24 SECTION 1.03. Chapter 15, Utilities Code, is amended by

1 adding Subchapter D to read as follows:

2 SUBCHAPTER D. CEASE AND DESIST ORDERS

3 Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter
4 applies only to a person to whom Subtitle B applies.

5 Sec. 15.102. RULES. The commission shall adopt rules to
6 implement this subchapter.

7 Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission
8 may proceed solely under this subchapter or under this subchapter
9 in conjunction with other applicable law.

10 Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The
11 commission on its own motion may issue a cease and desist order:

12 (1) after providing notice and an opportunity for a
13 hearing if practicable or without notice or opportunity for a
14 hearing; and

15 (2) if the commission determines that the conduct of a
16 person:

17 (A) poses a threat to continuous and adequate
18 electric service;

19 (B) is hazardous;

20 (C) creates an immediate danger to the public
21 safety; or

22 (D) is causing or can be reasonably expected to
23 cause an immediate injury to a customer of electric services and
24 that the injury is incapable of being repaired or rectified by
25 monetary compensation.

26 (b) The commission by order or rule may delegate to the
27 executive director the authority to issue cease and desist orders

1 under this subchapter.

2 Sec. 15.105. NOTICE. (a) Notice of a proposed order must
3 be given not later than the 10th day before the date set for a
4 hearing if the commission requires notice and hearing before
5 issuing the order.

6 (b) On issuance of an order under Section 15.104 with or
7 without a hearing, the commission shall serve on the person
8 affected by the order an order that:

9 (1) contains a statement of the charges; and

10 (2) requires the person immediately to cease and
11 desist from the acts, methods, or practices stated in the order.

12 (c) The commission shall serve the order by registered or
13 certified mail, return receipt requested, to the person's last
14 known address.

15 Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,
16 does not apply to the issuance of a cease and desist order under
17 this subchapter without a hearing. A hearing conducted before or
18 after issuance of an order under this subchapter is a contested case
19 under Chapter 2001, Government Code.

20 (b) If the commission issues an order under this subchapter
21 without a hearing, the person affected by the order may request a
22 hearing to affirm, modify, or set aside the order. A request must
23 be submitted not later than the 30th day after the date the person
24 receives the order. The commission shall set the hearing for a date
25 that is:

26 (1) not later than the 10th day after the date the
27 commission receives a request for a hearing; or

1 (2) agreed to by the person and the commission.

2 (c) At or following the hearing, the commission shall wholly
3 or partly affirm, modify, or set aside the order. If the person
4 affected by an order does not request a hearing in the manner
5 provided by Subsection (b) and the commission does not hold a
6 hearing on the order, the order is affirmed without further action
7 by the commission.

8 (d) The commission may hold a hearing under this subchapter
9 or may authorize the State Office of Administrative Hearings to
10 hold the hearing.

11 Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a
12 hearing under this subchapter, an order continues in effect unless
13 the order is stayed by the commission.

14 SECTION 1.04. Section 39.151, Utilities Code, is amended by
15 amending Subsections (d-1) and (e) and adding Subsections (d-2),
16 (d-3), (d-4), and (e-1) to read as follows:

17 (d-1) The commission shall require an independent
18 organization certified by the commission under this section to
19 submit to the commission the organization's entire proposed annual
20 budget. The commission shall review the proposed budgets either
21 annually or biennially and may approve, disapprove, or modify any
22 item included in a proposed budget. The commission by rule shall
23 establish the type of information or documents needed to
24 effectively evaluate the proposed budget and reasonable dates for
25 the submission of that information or those documents. The
26 commission shall establish a procedure to provide public notice of
27 and public participation in the budget review process.

1 (d-2) Except as otherwise agreed to by the commission and an
2 independent organization certified by the commission under this
3 section, the organization must submit to the commission for review
4 and approval proposals for obtaining debt financing or for
5 refinancing existing debt. The commission may approve, disapprove,
6 or modify a proposal.

7 (d-3) An independent organization certified by the
8 commission under this section shall develop proposed performance
9 measures to track the organization's operations. The independent
10 organization must submit the proposed performance measures to the
11 commission for review and approval. The commission shall review
12 the organization's performance as part of the budget review process
13 under Subsection (d-1). The commission shall prepare a report at
14 the time the commission approves the organization's budget
15 detailing the organization's performance and submit the report to
16 the lieutenant governor, the speaker of the house of
17 representatives, and each house and senate standing committee that
18 has jurisdiction over electric utility issues.

19 (d-4) The commission may:

20 (1) require an independent organization to provide
21 reports and information relating to the independent organization's
22 performance of the functions prescribed by this section and
23 relating to the organization's revenues, expenses, and other
24 financial matters;

25 (2) prescribe a system of accounts for an independent
26 organization;

27 (3) conduct audits of an independent organization's

1 performance of the functions prescribed by this section or relating
2 to its revenues, expenses, and other financial matters and may
3 require an independent organization to conduct such an audit;

4 (4) inspect an independent organization's facilities,
5 records, and accounts during reasonable hours and after reasonable
6 notice to the independent organization;

7 (5) assess administrative penalties against an
8 independent organization that violates this title or a rule or
9 order adopted by the commission and, at the request of the
10 commission, the attorney general may apply for a court order to
11 require an independent organization to comply with commission rules
12 and orders in the manner provided by Chapter 15; and

13 (6) resolve disputes between an affected person and an
14 independent organization and adopt procedures for the efficient
15 resolution of such disputes.

16 (e) After approving the budget of an independent
17 organization under Subsection (d-1), the [The] commission shall
18 [may] authorize the [an independent] organization [that is
19 certified under this section] to charge [a reasonable and
20 competitively neutral rate] to wholesale buyers and sellers a
21 system administration fee, within a range determined by the
22 commission, that is reasonable and competitively neutral to fund
23 [to cover] the independent organization's approved budget [costs].
24 The commission shall investigate the organization's cost
25 efficiencies, salaries and benefits, and use of debt financing and
26 may require the organization to provide any information needed to
27 effectively evaluate [the organization's budget and] the

1 reasonableness and neutrality of the fee [~~a rate or proposed rate~~]
2 or to evaluate the effectiveness or efficiency of the organization.
3 The commission shall work with the organization to establish the
4 detail of information, both current and historical, and the time
5 frames the commission needs to effectively evaluate the fee. The
6 commission shall require the organization to closely match actual
7 revenues generated by the fee and other sources of revenue with
8 revenue necessary to fund the budget, taking into account the
9 effect of a fee change on market participants and consumers, to
10 ensure that the budget year does not end with surplus or
11 insufficient funds. The commission shall require the organization
12 to submit to the commission, on a schedule determined by the
13 commission, reports that compare actual expenditures with budgeted
14 expenditures [~~a rate or a rate request~~].

15 (e-1) The review and approval of a proposed budget under
16 Subsection (d-1) or a proceeding to authorize and set the range for
17 the amount of a fee under Subsection (e) is not a contested case for
18 purposes of Chapter 2001, Government Code.

19 SECTION 1.05. Section 39.1515(c), Utilities Code, is
20 amended to read as follows:

21 (c) The independent organization shall use money from the
22 fee [~~rate~~] authorized by Section 39.151(e) to pay for the market
23 monitor's activities.

24 SECTION 1.06. Section 39.903(d), Utilities Code, is amended
25 to read as follows:

26 (d) The commission shall annually review and approve system
27 benefit fund accounts, projected revenue requirements, and

1 proposed nonbypassable fees. [~~The commission shall report to the~~
2 ~~electric utility restructuring legislative oversight committee if~~
3 ~~the system benefit fund fee is insufficient to fund the purposes set~~
4 ~~forth in Subsection (e) to the extent required by this section.~~]

5 SECTION 1.07. Subchapter C, Chapter 52, Utilities Code, is
6 amended by adding Section 52.1035 to read as follows:

7 Sec. 52.1035. RENEWAL OF CERTAIN CERTIFICATES. (a) The
8 commission by rule shall require each holder of a certificate of
9 operating authority and holder of a service provider certificate of
10 operating authority to file with the commission on a one-time or
11 regular basis:

12 (1) the certificate holder's name;
13 (2) the certificate holder's address; and
14 (3) the most recent version of each annual report the
15 commission requires the certificate holder to file under this
16 subtitle.

17 (b) The rules must:

18 (1) require the commission to automatically allow a
19 certificate holder an extension of a filing deadline for the number
20 of days prescribed by the rule, as applicable; and

21 (2) state that the certificate of a holder will not be
22 valid after the last day of the automatic extension period
23 described by Subdivision (1) if the certificate holder does not
24 file information required by the commission under this section by
25 the end of the automatic extension period.

26 (c) A certificate holder whose certificate is no longer
27 valid may obtain a new certificate only by complying with the

1 requirements prescribed for obtaining an original certificate.

2 SECTION 1.08. Section 64.003, Utilities Code, is repealed.

3 SECTION 1.09. The Public Utility Commission of Texas shall
4 adopt rules to implement the filing process required by Section
5 52.1035, Utilities Code, as added by this article, as soon as
6 practicable. The rules must specify whether the commission will
7 require that a holder of a certificate of operating authority or
8 holder of a service provider certificate of operating authority
9 file the information required by Section 52.1035, Utilities Code,
10 as added by this article, once or on a regular basis. Regardless of
11 the frequency of filing required, each certificate holder shall
12 file the information required by Section 52.1035, Utilities Code,
13 as added by this article, not later than January 1, 2015. If the
14 commission requires regular filings, the rules must specify the
15 timing of the subsequent filings.

16 ARTICLE 2. WATER AND SEWER UTILITIES AND OTHER RELATED DUTIES OF
17 THE PUBLIC UTILITY COMMISSION OF TEXAS; RATES FOR WATER SERVICE

18 SECTION 2.01. Section 5.013(a), Water Code, is amended to
19 read as follows:

20 (a) The commission has general jurisdiction over:

21 (1) water and water rights including the issuance of
22 water rights permits, water rights adjudication, cancellation of
23 water rights, and enforcement of water rights;

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

27 (3) the state's water quality program including

1 issuance of permits, enforcement of water quality rules, standards,
2 orders, and permits, and water quality planning;

3 (4) the determination of the feasibility of certain
4 federal projects;

5 (5) the adoption and enforcement of rules and
6 performance of other acts relating to the safe construction,
7 maintenance, and removal of dams;

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

10 (7) the administration of the state's program relating
11 to inactive hazardous substance, pollutant, and contaminant
12 disposal facilities;

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

15 (9) the administration of the state's programs
16 involving underground water and water wells and drilled and mined
17 shafts;

18 (10) the state's responsibilities relating to regional
19 waste disposal;

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

22 (12) ~~[administration of the state's water rate program~~
23 ~~under Chapter 13 of this code; and~~

24 ~~[(13)]~~ any other areas assigned to the commission by
25 this code and other laws of this state.

26 SECTION 2.02. Section 5.311(a), Water Code, is amended to
27 read as follows:

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

6 SECTION 2.03. Section 5.507, Water Code, is amended to read
7 as follows:

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

15 SECTION 2.04. Sections 5.508(a) and (c), Water Code, are
16 amended to read as follows:

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

26 (c) Notwithstanding Section 5.505, an order may be issued
27 under this section for a term not to exceed 15 months. The Public

1 Utility Commission of Texas [~~commission~~] shall schedule a hearing
2 to establish a final rate within 15 months after the date on which
3 an emergency rate increase takes effect. The additional revenues
4 collected under an emergency rate increase are subject to refund if
5 the utility commission finds that the rate increase was larger than
6 necessary to ensure continuous and adequate service.

7 SECTION 2.05. Section 11.002, Water Code, is amended by
8 adding Subdivision (21) to read as follows:

9 (21) "Utility commission" means the Public Utility
10 Commission of Texas.

11 SECTION 2.06. Section 11.041(f), Water Code, is amended to
12 read as follows:

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

20 SECTION 2.07. Section 12.013, Water Code, is amended to
21 read as follows:

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

26 (b) In this section, [~~The term~~] "political subdivision"
27 [~~when used in this section~~] means incorporated cities, towns or

1 villages, counties, river authorities, water districts, and other
2 special purpose districts.

3 (c) The utility commission in reviewing and fixing
4 reasonable rates for furnishing water under this section may use
5 any reasonable basis for fixing rates as may be determined by the
6 utility commission to be appropriate under the circumstances of the
7 case being reviewed; provided, however, the utility commission may
8 not fix a rate which a political subdivision may charge for
9 furnishing water which is less than the amount required to meet the
10 debt service and bond coverage requirements of that political
11 subdivision's outstanding debt.

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

16 (e) The utility commission may establish interim rates and
17 compel continuing service during the pendency of any rate
18 proceeding.

19 (f) The utility commission may order a refund or assess
20 additional charges from the date a petition for rate review is
21 received by the utility commission of the difference between the
22 rate actually charged and the rate fixed by the utility commission,
23 plus interest at the statutory rate.

24 ~~[(g) No action or proceeding commenced prior to January 1,~~
25 ~~1977, before the Texas Water Rights Commission shall be affected by~~
26 ~~the enactment of this section.~~

27 ~~[(h) Nothing herein contained shall affect the jurisdiction~~

1 ~~of the Public Utility Commission.]~~

2 SECTION 2.08. Section 13.002, Water Code, is amended by
3 amending Subdivisions (2), (18), and (22) and adding Subdivisions
4 (4-a), (4-b), (4-c), and (22-a) to read as follows:

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

6 (A) any person or corporation owning or holding
7 directly or indirectly five percent or more of the voting
8 securities of a utility;

9 (B) any person or corporation in any chain of
10 successive ownership of five percent or more of the voting
11 securities of a utility;

12 (C) any corporation five percent or more of the
13 voting securities of which is owned or controlled directly or
14 indirectly by a utility;

15 (D) any corporation five percent or more of the
16 voting securities of which is owned or controlled directly or
17 indirectly by any person or corporation that owns or controls
18 directly or indirectly five percent or more of the voting
19 securities of any utility or by any person or corporation in any
20 chain of successive ownership of five percent of those utility
21 securities;

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

25 (F) any person or corporation that the utility
26 commission, after notice and hearing, determines actually
27 exercises any substantial influence or control over the policies

1 and actions of a utility or over which a utility exercises such
2 control or that is under common control with a utility, such control
3 being the possession directly or indirectly of the power to direct
4 or cause the direction of the management and policies of another,
5 whether that power is established through ownership or voting of
6 securities or by any other direct or indirect means; or

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

14 (4-a) "Class A utility" means a public utility that
15 provides retail water or sewer utility service through 10,000 or
16 more taps or connections.

17 (4-b) "Class B utility" means a public utility that
18 provides retail water or sewer utility service through 500 or more
19 taps or connections but fewer than 10,000 taps or connections.

20 (4-c) "Class C utility" means a public utility that
21 provides retail water or sewer utility service through fewer than
22 500 taps or connections.

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

26 (22) "Test year" means the most recent 12-month
27 period, beginning on the first day of a calendar or fiscal year

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

5 (22-a) "Utility commission" means the Public Utility
6 Commission of Texas.

7 SECTION 2.09. Section 13.004, Water Code, is amended to
8 read as follows:

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

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

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

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

26 SECTION 2.10. Section 13.011, Water Code, is amended to
27 read as follows:

1 Sec. 13.011. EMPLOYEES. (a) The utility commission and
2 the executive director of the commission, subject to approval, as
3 applicable, by the utility commission or the commission, shall
4 employ any engineering, accounting, and administrative personnel
5 necessary to carry out each agency's powers and duties under this
6 chapter.

7 (b) The executive director and the commission's staff are
8 responsible for the gathering of information relating to all
9 matters within the jurisdiction of the commission under this
10 subchapter. The utility commission and the utility commission's
11 staff are responsible for the gathering of information relating to
12 all matters within the jurisdiction of the utility commission under
13 this subchapter. The duties of the utility commission, the
14 executive director, and the staff of the utility commission or
15 commission, as appropriate, include:

16 (1) accumulation of evidence and other information
17 from water and sewer utilities, ~~[and]~~ from the utility commission
18 or commission, as appropriate, and the governing body of the
19 respective agency, ~~[commission and the board]~~ and from other
20 sources for the purposes specified by this chapter;

21 (2) preparation and presentation of evidence before
22 the utility commission or commission, as appropriate, ~~[commission]~~
23 or its appointed examiner in proceedings;

24 (3) conducting investigations of water and sewer
25 utilities under the jurisdiction of the utility commission or
26 commission, as appropriate ~~[commission]~~;

27 (4) preparation of recommendations that the utility

1 commission or commission, as appropriate, [~~commission~~] undertake
2 an investigation of any matter within its jurisdiction;

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

6 (6) protection and representation of the public
7 interest[~~, together with the public interest advocate,~~] before the
8 utility commission or commission, as appropriate [~~commission~~]; and

9 (7) other activities that are reasonably necessary to
10 enable the utility commission and the executive director and the
11 staff of the utility commission or commission, as appropriate, to
12 perform their duties.

13 SECTION 2.11. Section 13.014, Water Code, is amended to
14 read as follows:

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

19 SECTION 2.12. Subchapter B, Chapter 13, Water Code, is
20 amended by adding Section 13.017 to read as follows:

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

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

27 (1) shall assess the effect of utility rate changes

1 and other regulatory actions on residential consumers in this
2 state;

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

6 (3) may appear or intervene, as a party or otherwise,
7 as a matter of right on behalf of:

8 (A) residential consumers, as a class, in any
9 proceeding before the utility commission, including an alternative
10 dispute resolution proceeding; and

11 (B) small commercial consumers, as a class, in
12 any proceeding in which the counsellor determines that small
13 commercial consumers are in need of representation, including an
14 alternative dispute resolution proceeding;

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

17 (A) that involves an action taken by an
18 administrative agency in a proceeding, including an alternative
19 dispute resolution proceeding, in which the counsellor is
20 authorized to appear; or

21 (B) in which the counsellor determines that
22 residential consumers or small commercial consumers are in need of
23 representation;

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

27 (6) is entitled to discovery of any nonprivileged

1 matter that is relevant to the subject matter of a proceeding or
2 petition before the utility commission;

3 (7) may represent an individual residential or small
4 commercial consumer with respect to the consumer's disputed
5 complaint concerning retail utility services that is unresolved
6 before the utility commission;

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

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

12 (c) This section does not:

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

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

17 (d) The appearance of the counsellor in a proceeding does
18 not preclude the appearance of other parties on behalf of
19 residential or small commercial consumers. The counsellor may not
20 be grouped with any other party.

21 SECTION 2.13. Section 13.041, Water Code, is amended to
22 read as follows:

23 Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND
24 COMMISSION ~~[POWER]~~; RULES; HEARINGS. (a) The utility commission
25 may regulate and supervise the business of each ~~[every]~~ water and
26 sewer utility within its jurisdiction, including ratemaking and
27 other economic regulation. The commission may regulate water and

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

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

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

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

27 (d) The utility commission may issue emergency orders, with

1 or without a hearing:

2 (1) to compel a water or sewer service provider that
3 has obtained or is required to obtain a certificate of public
4 convenience and necessity to provide continuous and adequate water
5 service, sewer service, or both, if the discontinuance of the
6 service is imminent or has occurred because of the service
7 provider's actions or failure to act; and

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

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

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

22 (g) The regulatory assessment required by Section 5.701(n)
23 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the
24 utility commission under Section 13.043 [~~of this code~~]. The
25 commission has the authority to enforce payment and collection of
26 the regulatory assessment.

27 SECTION 2.14. Section 13.042, Water Code, is amended to

1 read as follows:

2 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND
3 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the
4 limitations imposed in this chapter and for the purpose of
5 regulating rates and services so that those rates may be fair, just,
6 and reasonable and the services adequate and efficient, the
7 governing body of each municipality has exclusive original
8 jurisdiction over all water and sewer utility rates, operations,
9 and services provided by a water and sewer utility within its
10 corporate limits.

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

15 (c) The governing body of a municipality that surrenders its
16 jurisdiction to the utility commission may reinstate its
17 jurisdiction by ordinance at any time after the second anniversary
18 of the date on which the municipality surrendered its jurisdiction
19 to the utility commission, except that the municipality may not
20 reinstate its jurisdiction during the pendency of a rate proceeding
21 before the utility commission. The municipality may not surrender
22 its jurisdiction again until the second anniversary of the date on
23 which the municipality reinstates jurisdiction.

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

27 (e) The utility commission shall have exclusive original

1 jurisdiction over water and sewer utility rates, operations, and
2 services not within the incorporated limits of a municipality
3 exercising exclusive original jurisdiction over those rates,
4 operations, and services as provided in this chapter.

5 (f) This subchapter does not give the utility commission
6 power or jurisdiction to regulate or supervise the rates or service
7 of a utility owned and operated by a municipality, directly or
8 through a municipally owned corporation, within its corporate
9 limits or to affect or limit the power, jurisdiction, or duties of a
10 municipality that regulates land and supervises water and sewer
11 utilities within its corporate limits, except as provided by this
12 code.

13 SECTION 2.15. Sections 13.043(a), (b), (c), (e), (f), (g),
14 (h), and (j), Water Code, are amended to read as follows:

15 (a) Any party to a rate proceeding before the governing body
16 of a municipality may appeal the decision of the governing body to
17 the utility commission. This subsection does not apply to a
18 municipally owned utility. An appeal under this subsection must be
19 initiated within 90 days after the date of notice of the final
20 decision by the governing body, or within 30 days if the appeal
21 relates to the rates of a Class A utility, by filing a petition for
22 review with the utility commission and by serving copies on all
23 parties to the original rate proceeding. The utility commission
24 shall hear the appeal de novo and shall fix in its final order the
25 rates the governing body should have fixed in the action from which
26 the appeal was taken and may include reasonable expenses incurred
27 in the appeal proceedings. The utility commission may establish

1 the effective date for the utility commission's rates at the
2 original effective date as proposed by the utility provider and may
3 order refunds or allow a surcharge to recover lost revenues. The
4 utility commission may consider only the information that was
5 available to the governing body at the time the governing body made
6 its decision and evidence of reasonable expenses incurred in the
7 appeal proceedings.

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

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

13 (2) a utility under the jurisdiction of a municipality
14 inside the corporate limits of the municipality;

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

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

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

25 (c) An appeal under Subsection (b) [~~of this section~~] must be
26 initiated by filing a petition for review with the utility
27 commission and the entity providing service within 90 days after

1 the effective day of the rate change or, if appealing under
2 Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after
3 the date on which the governing body of the municipality or affected
4 county makes a final decision. The petition must be signed by the
5 lesser of 10,000 or 10 percent of those ratepayers whose rates have
6 been changed and who are eligible to appeal under Subsection (b) [~~of~~
7 ~~this section~~].

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

27 (f) A retail public utility that receives water or sewer

1 service from another retail public utility or political subdivision
2 of the state, including an affected county, may appeal to the
3 utility commission a decision of the provider of water or sewer
4 service affecting the amount paid for water or sewer service. An
5 appeal under this subsection must be initiated within 90 days after
6 the date of notice of the decision is received from the provider of
7 water or sewer service by the filing of a petition by the retail
8 public utility.

9 (g) An applicant for service from an affected county or a
10 water supply or sewer service corporation may appeal to the utility
11 commission a decision of the county or water supply or sewer service
12 corporation affecting the amount to be paid to obtain service other
13 than the regular membership or tap fees. In addition to the factors
14 specified under Subsection (j), in an appeal brought under this
15 subsection the utility commission shall determine whether the
16 amount paid by the applicant is consistent with the tariff of the
17 water supply or sewer service corporation and is reasonably related
18 to the cost of installing on-site and off-site facilities to
19 provide service to that applicant. If the utility commission finds
20 the amount charged to be clearly unreasonable, it shall establish
21 the fee to be paid for that applicant. An appeal under this
22 subsection must be initiated within 90 days after the date written
23 notice is provided to the applicant or member of the decision of an
24 affected county or water supply or sewer service corporation
25 relating to the applicant's initial request for that service. A
26 determination made by the utility commission on an appeal under
27 this subsection is binding on all similarly situated applicants for

1 service, and the utility commission may not consider other appeals
2 on the same issue until the applicable provisions of the tariff of
3 the water supply or sewer service corporation are amended.

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

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

19 SECTION 2.16. Section 13.044(b), Water Code, is amended to
20 read as follows:

21 (b) Notwithstanding the provisions of any resolution,
22 ordinance, or agreement, a district may appeal the rates imposed by
23 the municipality by filing a petition with the utility commission.
24 The utility commission shall hear the appeal de novo and the
25 municipality shall have the burden of proof to establish that the
26 rates are just and reasonable. The utility commission shall fix the
27 rates to be charged by the municipality and the municipality may not

1 increase such rates without the approval of the utility commission.

2 SECTION 2.17. Section 13.046, Water Code, is amended to
3 read as follows:

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

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

21 (c) The utility commission shall provide a reasonable
22 period for the retail public utility that takes over the
23 nonfunctioning system to bring the nonfunctioning system into
24 compliance with utility commission and commission rules during
25 which the utility commission or the commission may not impose a
26 penalty for any deficiency in the system that is present at the time
27 the utility takes over the nonfunctioning system. The utility

1 commission must consult with the utility before determining the
2 period and may grant an extension of the period for good cause.

3 SECTION 2.18. Section 13.081, Water Code, is amended to
4 read as follows:

5 Sec. 13.081. FRANCHISES. This chapter may not be construed
6 as in any way limiting the rights and powers of a municipality to
7 grant or refuse franchises to use the streets and alleys within its
8 limits and to make the statutory charges for their use, but no
9 provision of any franchise agreement may limit or interfere with
10 any power conferred on the utility commission by this chapter. If a
11 municipality performs regulatory functions under this chapter, it
12 may make such other charges as may be provided in the applicable
13 franchise agreement, together with any other charges permitted by
14 this chapter.

15 SECTION 2.19. Section 13.082, Water Code, is amended to
16 read as follows:

17 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT
18 AREAS. (a) Notwithstanding any other provision of this section,
19 municipalities shall continue to regulate each kind of local
20 utility service inside their boundaries until the utility
21 commission has assumed jurisdiction over the respective utility
22 pursuant to this chapter.

23 (b) If a municipality does not surrender its jurisdiction,
24 local utility service within the boundaries of the municipality
25 shall be exempt from regulation by the utility commission under
26 this chapter to the extent that this chapter applies to local
27 service, and the municipality shall have, regarding service within

1 its boundaries, the right to exercise the same regulatory powers
2 under the same standards and rules as the utility commission or
3 other standards and rules not inconsistent with them. The utility
4 commission's rules relating to service and response to requests for
5 service for utilities operating within a municipality's corporate
6 limits apply unless the municipality adopts its own rules.

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

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

19 (e) This section does not limit the duty and power of the
20 utility commission to regulate service and rates of municipally
21 regulated water and sewer utilities for service provided to other
22 areas in Texas.

23 SECTION 2.20. Section 13.085, Water Code, is amended to
24 read as follows:

25 Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,
26 the utility commission may advise and assist municipalities and
27 affected counties in connection with questions and proceedings

1 arising under this chapter. This assistance may include aid to
2 municipalities or an affected county in connection with matters
3 pending before the utility commission, the courts, the governing
4 body of any municipality, or the commissioners court of an affected
5 county, including making members of the staff available to them as
6 witnesses and otherwise providing evidence.

7 SECTION 2.21. Section 13.087(c), Water Code, is amended to
8 read as follows:

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

11 SECTION 2.22. Sections 13.131(a), (b), (c), and (e), Water
12 Code, are amended to read as follows:

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

23 (b) In the case of a utility subject to regulation by a
24 federal regulatory agency, compliance with the system of accounts
25 prescribed for the particular class of utilities by that agency may
26 be considered a sufficient compliance with the system prescribed by
27 the utility commission. However, the utility commission may

1 prescribe forms of books, accounts, records, and memoranda covering
2 information in addition to that required by the federal agency. The
3 system of accounts and the forms of books, accounts, records, and
4 memoranda prescribed by the utility commission for a utility or
5 class of utilities may not conflict or be inconsistent with the
6 systems and forms established by a federal agency for that utility
7 or class of utilities.

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

21 (e) Every utility is required to keep and render its books,
22 accounts, records, and memoranda accurately and faithfully in the
23 manner and form prescribed by the utility commission and to comply
24 with all directions of the regulatory authority relating to those
25 books, accounts, records, and memoranda. The regulatory authority
26 may require the examination and audit of all accounts.

27 SECTION 2.23. Section 13.132, Water Code, is amended to

1 read as follows:

2 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The
3 utility commission may:

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

11 (2) establish forms for all reports;

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

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

15 (5) require that a copy of any contract or arrangement
16 between any utility and any affiliated interest be filed with it and
17 require that such a contract or arrangement that is not in writing
18 be reduced to writing;

19 (6) require that a copy of any report filed with any
20 federal agency or any governmental agency or body of any other state
21 be filed with it; and

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

1 (b) On the request of the governing body of any
2 municipality, the utility commission may provide sufficient staff
3 members to advise and consult with the municipality on any pending
4 matter.

5 SECTION 2.24. Section 13.1325, Water Code, is amended to
6 read as follows:

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

17 SECTION 2.25. Section 13.133(b), Water Code, is amended to
18 read as follows:

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

26 SECTION 2.26. Section 13.136, Water Code, is amended by
27 amending Subsections (b) and (c) and adding Subsection (b-1) to

1 read as follows:

2 (b) The utility commission by rule shall require each [Each]
3 utility to annually [shall] file a service, [and] financial, and
4 normalized earnings report in a form and at times specified by
5 utility commission rule. The report must include information
6 sufficient to enable the utility commission to properly monitor
7 utilities in this state. The utility commission shall make
8 available to the public information in the report the utility does
9 not file as confidential.

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

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

23 SECTION 2.27. Section 13.137, Water Code, is amended to
24 read as follows:

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

27 (1) make available and notify its customers of a

1 business location where its customers may make payments to prevent
2 disconnection of or to restore service:

3 (A) in each county in which the utility provides
4 service; or

5 (B) not more than 20 miles from the residence of
6 any residential customer if there is no location to receive
7 payments in the county; and

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

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

20 (c) Books, accounts, records, or memoranda required by the
21 regulatory authority to be kept in the state may not be removed from
22 the state, except on conditions prescribed by the utility
23 commission.

24 SECTION 2.28. Section 13.139(b), Water Code, is amended to
25 read as follows:

26 (b) The governing body of a municipality, as the regulatory
27 authority for public utilities operating within its corporate

1 limits, and the utility commission or the commission as the
2 regulatory authority for public utilities operating outside the
3 corporate limits of any municipality, after reasonable notice and
4 hearing on its own motion, may:

5 (1) ascertain and fix just and reasonable standards,
6 classifications, regulations, service rules, minimum service
7 standards or practices to be observed and followed with respect to
8 the service to be furnished;

9 (2) ascertain and fix adequate and reasonable
10 standards for the measurement of the quantity, quality, pressure,
11 or other condition pertaining to the supply of the service;

12 (3) prescribe reasonable regulations for the
13 examination and testing of the service and for the measurement of
14 service; and

15 (4) establish or approve reasonable rules,
16 regulations, specifications, and standards to secure the accuracy
17 of all meters, instruments, and equipment used for the measurement
18 of any utility service.

19 SECTION 2.29. Section 13.1395, Water Code, is amended by
20 adding Subsection (m) to read as follows:

21 (m) The commission shall coordinate with the utility
22 commission in the administration of this section.

23 SECTION 2.30. Sections 13.1396(b), (c), and (f), Water
24 Code, are amended to read as follows:

25 (b) An affected utility shall submit to the office of
26 emergency management of each county in which the utility has more
27 than one customer, the utility commission [~~Public Utility~~

~~Commission of Texas~~], and the office of emergency management of the governor a copy of:

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

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

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

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

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

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

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

(C) the affected utility's mailing address.

(f) Not later than May 1 of each year, each electric utility and each retail electric provider shall determine whether the

1 facilities of the affected utility qualify for critical load status
2 under rules adopted by the utility commission [~~Public Utility~~
3 ~~Commission of Texas~~].

4 SECTION 2.31. Section 13.142(b), Water Code, is amended to
5 read as follows:

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

9 SECTION 2.32. Section 13.144, Water Code, is amended to
10 read as follows:

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

25 SECTION 2.33. Section 13.147(a), Water Code, is amended to
26 read as follows:

27 (a) A retail public utility providing water service may

1 contract with a retail public utility providing sewer service to
2 bill and collect the sewer service provider's fees and payments as
3 part of a consolidated process with the billing and collection of
4 the water service provider's fees and payments. The water service
5 provider may provide that service only for customers who are served
6 by both providers in an area covered by both providers'
7 certificates of public convenience and necessity. If the water
8 service provider refuses to enter into a contract under this
9 section or if the water service provider and sewer service provider
10 cannot agree on the terms of a contract, the sewer service provider
11 may petition the utility commission to issue an order requiring the
12 water service provider to provide that service.

13 SECTION 2.34. Section 13.181(b), Water Code, is amended to
14 read as follows:

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

1 required under this chapter provided that rates are just and
2 reasonable for customers and the utility and that service is safe,
3 adequate, efficient, and reasonable.

4 SECTION 2.35. Sections 13.182(c) and (d), Water Code, are
5 amended to read as follows:

6 (c) For ratemaking purposes, the utility commission may
7 treat two or more municipalities served by a utility as a single
8 class wherever the utility commission considers that treatment to
9 be appropriate.

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

14 SECTION 2.36. Section 13.183(d), Water Code, is amended to
15 read as follows:

16 (d) A regulatory authority other than the utility
17 commission may not approve an acquisition adjustment for a system
18 purchased before the effective date of an ordinance authorizing
19 acquisition adjustments.

20 SECTION 2.37. Section 13.184(a), Water Code, is amended to
21 read as follows:

22 (a) Unless the utility commission establishes alternate
23 rate methodologies in accordance with Section 13.183(c), the
24 utility commission may not prescribe any rate that will yield more
25 than a fair return on the invested capital used and useful in
26 rendering service to the public. The governing body of a
27 municipality exercising its original jurisdiction over rates and

1 services may use alternate ratemaking methodologies established by
2 ordinance or by utility commission rule in accordance with Section
3 13.183(c). Unless the municipal regulatory authority uses
4 alternate ratemaking methodologies established by ordinance or by
5 utility commission rule in accordance with Section 13.183(c), it
6 may not prescribe any rate that will yield more than a fair return
7 on the invested capital used and useful in rendering service to the
8 public.

9 SECTION 2.38. Sections 13.185(d) and (h), Water Code, are
10 amended to read as follows:

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

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

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

19 (h) The regulatory authority may not include for ratemaking
20 purposes:

21 (1) legislative advocacy expenses, whether made
22 directly or indirectly, including legislative advocacy expenses
23 included in trade association dues;

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

26 (3) any expenditure found by the regulatory authority
27 to be unreasonable, unnecessary, or not in the public interest,

1 including executive salaries, advertising expenses, legal
2 expenses, and civil penalties or fines.

3 SECTION 2.39. Section 13.187, Water Code, is amended to
4 read as follows:

5 Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO
6 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This
7 section applies only to a Class A utility.

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

18 (1) the information required by the regulatory
19 authority's rules;

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

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

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

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

27 (4) a description of the process by which a ratepayer

1 may intervene in the ratemaking proceeding.

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

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

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

1 paying the assessment and any applicable penalties or interest
2 required by Section 5.701(n) ~~[of this code]~~.

3 (d-1) After written notice to the utility, a local
4 regulatory authority may suspend the effective date of a rate
5 change for not more than 90 days from the proposed effective date~~[~~
6 ~~except that the suspension shall be extended by two days for each~~
7 ~~day a hearing exceeds 15 days]~~. If the local regulatory authority
8 does not make a final determination on the proposed rate before the
9 expiration of the ~~[applicable]~~ suspension period, the proposed rate
10 shall be considered approved. This ~~[The]~~ approval is subject to the
11 authority of the local regulatory authority thereafter to continue
12 ~~[authority's continuation of]~~ a hearing in progress.

13 (e) After written notice to the utility, the utility
14 commission may suspend the effective date of a rate change for not
15 more than 150 days from the proposed effective date. If the utility
16 commission does not make a final determination on the proposed rate
17 before the expiration of the suspension period, the proposed rate
18 shall be considered approved. This approval is subject to the
19 authority of the utility commission thereafter to continue a
20 hearing in progress ~~[If, before the 91st day after the effective~~
21 ~~date of the rate change, the regulatory authority receives a~~
22 ~~complaint from any affected municipality, or from the lesser of~~
23 ~~1,000 or 10 percent of the ratepayers of the utility over whose~~
24 ~~rates the regulatory authority has original jurisdiction, the~~
25 ~~regulatory authority shall set the matter for hearing]~~.

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

1 (f) The regulatory authority shall, not later than the 30th
2 day after the effective date of the change, begin a hearing to
3 determine the propriety of the change [~~may set the matter for~~
4 ~~hearing on its own motion at any time within 120 days after the~~
5 ~~effective date of the rate change~~]. If the regulatory authority is
6 the utility commission, the utility commission may refer the matter
7 to the State Office of Administrative Hearings as provided by
8 utility commission rules [~~If more than half of the ratepayers of the~~
9 ~~utility receive service in a county with a population of more than~~
10 ~~3.3 million, the hearing must be held at a location in that county~~].

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

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

20 (h) If, after hearing, the regulatory authority finds the
21 rates currently being charged or those proposed to be charged are
22 unreasonable or in violation of law, the regulatory authority shall
23 determine the rates to be charged by the utility and shall fix the
24 rates by order served on the utility.

25 (i) A utility may put a changed rate into effect throughout
26 the area in which the utility sought to change its rates, including
27 an area over which the utility commission is exercising appellate

1 or original jurisdiction, by filing a bond with the utility
2 commission if the suspension period has been extended under
3 Subsection (e-1) and the utility commission fails to make a final
4 determination before the 151st day after the date the rate change
5 would otherwise be effective.

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

14 (k) Unless otherwise agreed to by the parties to the rate
15 proceeding, the utility shall refund or credit against future
16 bills:

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

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

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

25 ~~[(k) If the regulatory authority receives at least the~~
26 ~~number of complaints from ratepayers required for the regulatory~~
27 ~~authority to set a hearing under Subsection (e), the regulatory~~

1 ~~authority may, pending the hearing and a decision, suspend the date~~
2 ~~the rate change would otherwise be effective. Except as provided by~~
3 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~
4 ~~than:~~

5 ~~[(1) 90 days by a local regulatory authority, or~~

6 ~~[(2) 150 days by the commission.]]~~

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

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

19 (n) For good cause shown, the regulatory authority may at
20 any time during the proceeding require the utility to refund money
21 collected under a proposed rate before the rate was suspended or an
22 interim rate was established to the extent the proposed rate
23 exceeds the existing rate or the interim rate.

24 (o) If a regulatory authority other than the utility
25 commission establishes interim rates or bonded rates [~~an escrow~~
26 ~~account~~], the regulatory authority must make a final determination
27 on the rates not later than the first anniversary of the effective

1 date of the interim rates or bonded [~~escrowed~~] rates or the rates
2 are automatically approved as requested by the utility.

3 (p) Except to implement a rate adjustment provision
4 approved by the regulatory authority by rule or ordinance, as
5 applicable, or to adjust the rates of a newly acquired utility
6 system, a utility or two or more utilities under common control and
7 ownership may not file a statement of intent to increase its rates
8 more than once in a 12-month period, unless the regulatory
9 authority determines that a financial hardship exists. If the
10 regulatory authority requires the utility to deliver a corrected
11 statement of intent, the utility is not considered to be in
12 violation of the 12-month filing requirement.

13 SECTION 2.40. Subchapter F, Chapter 13, Water Code, is
14 amended by adding Sections 13.1871 and 13.1872 to read as follows:

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

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

1 statement of intent must include:

2 (1) the information required by the regulatory
3 authority's rules;

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

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

7 (B) 30,000 gallons of water;

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

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

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

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

1 application, the regulatory authority may disallow the
2 nonsupported costs or expenses.

3 (e) Except as provided by Subsection (f) or (g), if the
4 application or the statement of intent is not substantially
5 complete or does not comply with the regulatory authority's rules,
6 it may be rejected and the effective date of the rate change may be
7 suspended until a properly completed application is accepted by the
8 regulatory authority and a proper statement of intent is provided.
9 The utility commission may also suspend the effective date of any
10 rate change if the utility does not have a certificate of public
11 convenience and necessity or a completed application for a
12 certificate or to transfer a certificate pending before the utility
13 commission or if the utility is delinquent in paying the assessment
14 and any applicable penalties or interest required by Section
15 5.701(n).

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

24 (g) After written notice to the utility, the utility
25 commission may suspend the effective date of a rate change for not
26 more than 205 days from the proposed effective date. If the utility
27 commission does not make a final determination on the proposed rate

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

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

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

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

20 (1) 90 days by a local regulatory authority; or

21 (2) 205 days by the utility commission.

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

25 (l) The hearing may be informal.

26 (m) The regulatory authority shall give reasonable notice
27 of the hearing, including notice to the governing body of each

1 affected municipality and county. The utility is not required to
2 provide a formal answer or file any other formal pleading in
3 response to the notice, and the absence of an answer does not affect
4 an order for a hearing.

5 (n) The utility shall mail notice of the hearing to each
6 ratepayer before the hearing. The notice must include a
7 description of the process by which a ratepayer may intervene in the
8 ratemaking proceeding.

9 (o) If, after hearing, the regulatory authority finds the
10 rates currently being charged or those proposed to be charged are
11 unreasonable or in violation of law, the regulatory authority shall
12 determine the rates to be charged by the utility and shall fix the
13 rates by order served on the utility.

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

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

26 (r) Unless otherwise agreed to by the parties to the rate
27 proceeding, the utility shall refund or credit against future

1 bills:

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

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

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

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

18 (u) For good cause shown, the regulatory authority may at
19 any time during the proceeding require the utility to refund money
20 collected under a proposed rate before the rate was suspended or an
21 interim rate was established to the extent the proposed rate
22 exceeds the existing rate or the interim rate.

23 (v) If a regulatory authority other than the utility
24 commission establishes interim rates or bonded rates, the
25 regulatory authority must make a final determination on the rates
26 not later than the first anniversary of the effective date of the
27 interim rates or bonded rates or the rates are automatically

1 approved as requested by the utility.

2 (w) Except to implement a rate adjustment provision
3 approved by the regulatory authority by rule or ordinance, as
4 applicable, or to adjust the rates of a newly acquired utility
5 system, a utility or two or more utilities under common control and
6 ownership may not file a statement of intent to increase its rates
7 more than once in a 12-month period, unless the regulatory
8 authority determines that a financial hardship exists. If the
9 regulatory authority requires the utility to deliver a corrected
10 statement of intent, the utility is not considered to be in
11 violation of the 12-month filing requirement.

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

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

14 (b) For purposes of this section, "price index" means an
15 appropriate price index designated annually by the utility
16 commission for the purposes of this section.

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

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

24 (2) complying with the procedures to change rates
25 described by Section 13.1871.

26 (d) The utility shall mail, send by e-mail, or deliver a
27 copy of the application to the appropriate offices of each affected

1 municipality and to any other affected persons as required by the
2 regulatory authority's rules.

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

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

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

12 (A) five percent; or

13 (B) the percentage increase in the price index
14 between the year preceding the year in which the utility requests
15 the adjustment and the year in which the utility requests the
16 adjustment.

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

21 SECTION 2.41. Section 13.188, Water Code, is amended to
22 read as follows:

23 Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a)
24 Notwithstanding any other provision in this chapter, the utility
25 commission by rule shall adopt a procedure allowing a utility to
26 file with the utility commission an application to timely adjust
27 the utility's rates to reflect an increase or decrease in

1 documented energy costs in a pass through clause. The utility
2 commission, by rule, shall require the pass through of documented
3 decreases in energy costs within a reasonable time. The pass
4 through, whether a decrease or increase, shall be implemented on no
5 later than an annual basis, unless the utility commission
6 determines a special circumstance applies.

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

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

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

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

18 SECTION 2.42. Sections 13.241(a), (d), and (e), Water Code,
19 are amended to read as follows:

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

24 (d) Before the utility commission grants a new certificate
25 of convenience and necessity for an area which would require
26 construction of a physically separate water or sewer system, the
27 applicant must demonstrate to the utility commission that

1 regionalization or consolidation with another retail public
2 utility is not economically feasible.

3 (e) The utility commission by rule shall develop a
4 standardized method for determining under Section 13.246(f) which
5 of two or more retail public utilities or water supply or sewer
6 service corporations that apply for a certificate of public
7 convenience and necessity to provide water or sewer utility service
8 to an uncertificated area located in an economically distressed
9 area is more capable financially, managerially, and technically of
10 providing continuous and adequate service. In this subsection,
11 "economically distressed area" has the meaning assigned by Section
12 15.001.

13 SECTION 2.43. Sections 13.242(a) and (c), Water Code, are
14 amended to read as follows:

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

1 consuming facility is located.

2 (c) The utility commission may by rule allow a municipality
3 or utility or water supply corporation to render retail water
4 service without a certificate of public convenience and necessity
5 if the municipality has given notice under Section 13.255 [~~of this~~
6 ~~code~~] that it intends to provide retail water service to an area or
7 if the utility or water supply corporation has less than 15
8 potential connections and is not within the certificated area of
9 another retail public utility.

10 SECTION 2.44. Section 13.244, Water Code, is amended to
11 read as follows:

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

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

25 (c) Each applicant for a certificate or for an amendment
26 shall file with the utility commission evidence required by the
27 utility commission to show that the applicant has received the

1 required consent, franchise, or permit of the proper municipality
2 or other public authority.

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

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

6 (A) a metes and bounds survey certified by a
7 licensed state land surveyor or a registered professional land
8 surveyor;

9 (B) the Texas State Plane Coordinate System;

10 (C) verifiable landmarks, including a road, -
11 creek, or railroad line; or

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

14 (2) a description of any requests for service in the
15 proposed service area;

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

19 (4) a description of the sources of funding for all
20 facilities;

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

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

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

27 (A) at least 50 acres; and

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

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

SECTION 2.45. Sections 13.245(b), (c), (c-1), (c-2), (c-3), and (e), Water Code, are amended to read as follows:

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

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

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

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements

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

7 (1) the utility commission makes the findings required
8 by Subsection (c);

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

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

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

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

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

27 (c-3) The utility commission must include as a condition of

1 a certificate of public convenience and necessity granted under
2 Subsection (c-1) or (c-2) that all water and sewer facilities be
3 designed and constructed in accordance with the municipality's
4 standards for water and sewer facilities.

5 (e) If the utility commission makes a decision under
6 Subsection (d) regarding the grant of a certificate of public
7 convenience and necessity without the consent of the municipality,
8 the municipality or the retail public utility may appeal the
9 decision to the appropriate state district court. The court shall
10 hear the petition within 120 days after the date the petition is
11 filed. On final disposition, the court may award reasonable fees to
12 the prevailing party.

13 SECTION 2.46. Sections 13.2451(b) and (c), Water Code, are
14 amended to read as follows:

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

23 (c) The utility commission, after notice to the
24 municipality and an opportunity for a hearing, may decertify an
25 area outside a municipality's extraterritorial jurisdiction if the
26 municipality does not provide service to the area on or before the
27 fifth anniversary of the date the certificate of public convenience

1 and necessity was granted for the area. This subsection does not
2 apply to a certificate of public convenience and necessity for an
3 area:

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

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

8 SECTION 2.47. Section 13.246, Water Code, is amended to
9 read as follows:

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

20 (a-1) Except as otherwise provided by this subsection, in
21 addition to the notice required by Subsection (a), the utility
22 commission shall require notice to be mailed to each owner of a
23 tract of land that is at least 25 acres and is wholly or partially
24 included in the area proposed to be certified. Notice required
25 under this subsection must be mailed by first class mail to the
26 owner of the tract according to the most current tax appraisal rolls
27 of the applicable central appraisal district at the time the

1 utility commission received the application for the certificate or
2 amendment. Good faith efforts to comply with the requirements of
3 this subsection shall be considered adequate notice to landowners.
4 Notice under this subsection is not required for a matter filed with
5 the utility commission or the commission under:

6 (1) Section 13.248 or 13.255; or

7 (2) Chapter 65.

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

18 (c) Certificates of public convenience and necessity and
19 amendments to certificates shall be granted by the utility
20 commission on a nondiscriminatory basis after consideration by the
21 utility commission of:

22 (1) the adequacy of service currently provided to the
23 requested area;

24 (2) the need for additional service in the requested
25 area, including whether any landowners, prospective landowners,
26 tenants, or residents have requested service;

27 (3) the effect of the granting of a certificate or of

1 an amendment on the recipient of the certificate or amendment, on
2 the landowners in the area, and on any retail public utility of the
3 same kind already serving the proximate area;

4 (4) the ability of the applicant to provide adequate
5 service, including meeting the standards of the commission, taking
6 into consideration the current and projected density and land use
7 of the area;

8 (5) the feasibility of obtaining service from an
9 adjacent retail public utility;

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

14 (7) environmental integrity;

15 (8) the probable improvement of service or lowering of
16 cost to consumers in that area resulting from the granting of the
17 certificate or amendment; and

18 (9) the effect on the land to be included in the
19 certificated area.

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

24 (e) Where applicable, in addition to the other factors in
25 this section the utility commission shall consider the efforts of
26 the applicant:

27 (1) to extend service to any economically distressed

1 areas located within the service areas certificated to the
2 applicant; and

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

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

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

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

1 An applicant for a certificate of public convenience and necessity
2 that has land removed from its proposed certificated service area
3 because of a landowner's election under this subsection may not be
4 required to provide service to the removed land for any reason,
5 including the violation of law or utility commission or commission
6 rules by the water or sewer system of another person.

7 (i) A landowner is not entitled to make an election under
8 Subsection (h) but is entitled to contest the inclusion of the
9 landowner's property in the proposed service area at a hearing held
10 by the utility commission regarding the application if the proposed
11 service area is located within the boundaries or extraterritorial
12 jurisdiction of a municipality with a population of more than
13 500,000 and the municipality or a utility owned by the municipality
14 is the applicant.

15 SECTION 2.48. Section 13.247(a), Water Code, is amended to
16 read as follows:

17 (a) If an area is within the boundaries of a municipality,
18 all retail public utilities certified or entitled to certification
19 under this chapter to provide service or operate facilities in that
20 area may continue and extend service in its area of public
21 convenience and necessity within the area pursuant to the rights
22 granted by its certificate and this chapter, unless the
23 municipality exercises its power of eminent domain to acquire the
24 property of the retail public utility under Subsection (d). Except
25 as provided by Section 13.255, a municipally owned or operated
26 utility may not provide retail water and sewer utility service
27 within the area certificated to another retail public utility

1 without first having obtained from the utility commission a
2 certificate of public convenience and necessity that includes the
3 areas to be served.

4 SECTION 2.49. Section 13.248, Water Code, is amended to
5 read as follows:

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

12 SECTION 2.50. Sections 13.250(b), (c), and (e), Water Code,
13 are amended to read as follows:

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

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

23 (2) nonpayment of charges for sewer service provided
24 by another retail public utility under an agreement between the
25 retail public utility and the certificate holder or a person who
26 possesses facilities used to provide utility service or under a
27 utility commission-ordered arrangement between the two service

1 providers;

2 (3) nonuse; or

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

5 (c) Any discontinuance, reduction, or impairment of
6 service, whether with or without approval of the utility
7 commission, shall be in conformity with and subject to conditions,
8 restrictions, and limitations that the utility commission
9 prescribes.

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

13 SECTION 2.51. Section 13.2502(d), Water Code, is amended to
14 read as follows:

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

17 SECTION 2.52. Section 13.251, Water Code, is amended to
18 read as follows:

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

1 shall be on the conditions prescribed by the utility commission.

2 SECTION 2.53. Section 13.252, Water Code, is amended to
3 read as follows:

4 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.

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

16 SECTION 2.54. Section 13.253, Water Code, is amended to
17 read as follows:

18 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING
19 SERVICE. (a) After notice and hearing, the utility commission or
20 the commission may:

21 (1) order any retail public utility that is required
22 by law to possess a certificate of public convenience and necessity
23 or any retail public utility that possesses a certificate of public
24 convenience and necessity and is located in an affected county as
25 defined in Section 16.341 to:

26 (A) provide specified improvements in its
27 service in a defined area if service in that area is inadequate or

1 is substantially inferior to service in a comparable area and it is
2 reasonable to require the retail public utility to provide the
3 improved service; or

4 (B) develop, implement, and follow financial,
5 managerial, and technical practices that are acceptable to the
6 utility commission to ensure that continuous and adequate service
7 is provided to any areas currently certificated to the retail
8 public utility if the retail public utility has not provided
9 continuous and adequate service to any of those areas and, for a
10 utility, to provide financial assurance of the utility's ability to
11 operate the system in accordance with applicable laws and rules, in
12 the form of a bond or other financial assurance in a form and amount
13 specified by the utility commission;

14 (2) order two or more public utilities or water supply
15 or sewer service corporations to establish specified facilities for
16 interconnecting service;

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

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

26 (b) If the utility commission has reason to believe that
27 improvements and repairs to a water or sewer service system are

1 necessary to enable a retail public utility to provide continuous
2 and adequate service in any portion of its service area and the
3 retail public utility has provided financial assurance under
4 Section 341.0355, Health and Safety Code, or under this chapter,
5 the utility commission, after providing to the retail public
6 utility notice and an opportunity to be heard by the commissioners
7 at a [~~commission~~] meeting of the utility commission, may
8 immediately order specified improvements and repairs to the water
9 or sewer system, the costs of which may be paid by the bond or other
10 financial assurance in an amount determined by the utility
11 commission not to exceed the amount of the bond or financial
12 assurance. The order requiring the improvements may be an
13 emergency order if it is issued after the retail public utility has
14 had an opportunity to be heard [~~by the commissioners~~] at a
15 [~~commission~~] meeting of the utility commission. After notice and
16 hearing, the utility commission may require a retail public utility
17 to obligate additional money to replace the financial assurance
18 used for the improvements.

19 SECTION 2.55. Sections 13.254(a), (a-1), (a-2), (a-3),
20 (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h),
21 Water Code, are amended to read as follows:

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

26 (1) the certificate holder has never provided, is no
27 longer providing, is incapable of providing, or has failed to

1 provide continuous and adequate service in the area, or part of the
2 area, covered by the certificate;

3 (2) in an affected county as defined in Section
4 16.341, the cost of providing service by the certificate holder is
5 so prohibitively expensive as to constitute denial of service,
6 provided that, for commercial developments or for residential
7 developments started after September 1, 1997, in an affected county
8 as defined in Section 16.341, the fact that the cost of obtaining
9 service from the currently certificated retail public utility makes
10 the development economically unfeasible does not render such cost
11 prohibitively expensive in the absence of other relevant factors;

12 (3) the certificate holder has agreed in writing to
13 allow another retail public utility to provide service within its
14 service area, except for an interim period, without amending its
15 certificate; or

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

22 (a-1) As an alternative to decertification under Subsection
23 (a), the owner of a tract of land that is at least 50 acres and that
24 is not in a platted subdivision actually receiving water or sewer
25 service may petition the utility commission under this subsection
26 for expedited release of the area from a certificate of public
27 convenience and necessity so that the area may receive service from

1 another retail public utility. The fact that a certificate holder
2 is a borrower under a federal loan program is not a bar to a request
3 under this subsection for the release of the petitioner's land and
4 the receipt of services from an alternative provider. On the day
5 the petitioner submits the petition to the utility commission, the
6 petitioner shall send, via certified mail, a copy of the petition to
7 the certificate holder, who may submit information to the utility
8 commission to controvert information submitted by the petitioner.
9 The petitioner must demonstrate that:

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

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

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

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

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

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

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

27 (2) the certificate holder has been allowed at least

1 90 calendar days to review and respond to the written request and
2 the information it contains;

3 (3) the certificate holder:

4 (A) has refused to provide the service;

5 (B) is not capable of providing the service on a
6 continuous and adequate basis within the timeframe, at the level,
7 at the approximate cost that the alternative provider is capable of
8 providing for a comparable level of service, or in the manner
9 reasonably needed or requested by current and projected service
10 demands in the area; or

11 (C) conditions the provision of service on the
12 payment of costs not properly allocable directly to the
13 petitioner's service request, as determined by the utility
14 commission; and

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

21 (a-2) A landowner is not entitled to make the election
22 described in Subsection (a-1) or (a-5) but is entitled to contest
23 under Subsection (a) the involuntary certification of its property
24 in a hearing held by the utility commission if the landowner's
25 property is located:

26 (1) within the boundaries of any municipality or the
27 extraterritorial jurisdiction of a municipality with a population

1 of more than 500,000 and the municipality or retail public utility
2 owned by the municipality is the holder of the certificate; or

3 (2) in a platted subdivision actually receiving water
4 or sewer service.

5 (a-3) Within 60 calendar days from the date the utility
6 commission determines the petition filed pursuant to Subsection
7 (a-1) to be administratively complete, the utility commission shall
8 grant the petition unless the utility commission makes an express
9 finding that the petitioner failed to satisfy the elements required
10 in Subsection (a-1) and supports its finding with separate findings
11 and conclusions for each element based solely on the information
12 provided by the petitioner and the certificate holder. The utility
13 commission may grant or deny a petition subject to terms and
14 conditions specifically related to the service request of the
15 petitioner and all relevant information submitted by the petitioner
16 and the certificate holder. In addition, the utility commission
17 may require an award of compensation as otherwise provided by this
18 section.

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

24 (a-6) The utility commission shall grant a petition
25 received under Subsection (a-5) not later than the 60th day after
26 the date the landowner files the petition. The utility commission
27 may not deny a petition received under Subsection (a-5) based on the

1 fact that a certificate holder is a borrower under a federal loan
2 program. The utility commission may require an award of
3 compensation by the petitioner to a decertified retail public
4 utility that is the subject of a petition filed under Subsection
5 (a-5) as otherwise provided by this section.

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

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

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

24 (d) A retail public utility may not in any way render retail
25 water or sewer service directly or indirectly to the public in an
26 area that has been decertified under this section without providing
27 compensation for any property that the utility commission

1 determines is rendered useless or valueless to the decertified
2 retail public utility as a result of the decertification.

3 (e) The determination of the monetary amount of
4 compensation, if any, shall be determined at the time another
5 retail public utility seeks to provide service in the previously
6 decertified area and before service is actually provided. The
7 utility commission shall ensure that the monetary amount of
8 compensation is determined not later than the 90th calendar day
9 after the date on which a retail public utility notifies the utility
10 commission of its intent to provide service to the decertified
11 area.

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

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

1 service facilities of the retail public utility located within the
2 area in question; the amount of any expenditures for planning,
3 design, or construction of service facilities that are allocable to
4 service to the area in question; the amount of the retail public
5 utility's contractual obligations allocable to the area in
6 question; any demonstrated impairment of service or increase of
7 cost to consumers of the retail public utility remaining after the
8 decertification; the impact on future revenues lost from existing
9 customers; necessary and reasonable legal expenses and
10 professional fees; and other relevant factors. The utility
11 commission shall adopt rules governing the evaluation of these
12 factors.

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

25 (h) A certificate holder that has land removed from its
26 certificated service area in accordance with this section may not
27 be required, after the land is removed, to provide service to the

1 removed land for any reason, including the violation of law or
2 utility commission or commission rules by a water or sewer system of
3 another person.

4 SECTION 2.56. Sections 13.255(a), (b), (c), (d), (e),
5 (g-1), (k), (l), and (m), Water Code, are amended to read as
6 follows:

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

27 (b) If an agreement is not executed within 180 days after

1 the municipality, in writing, notifies the retail public utility of
2 its intent to provide service to the incorporated or annexed area,
3 and if the municipality desires and intends to provide retail
4 utility service to the area, the municipality, prior to providing
5 service to the area, shall file an application with the utility
6 commission to grant single certification to the municipally owned
7 water or sewer utility or to a franchised utility. If an
8 application for single certification is filed, the utility
9 commission shall fix a time and place for a hearing and give notice
10 of the hearing to the municipality and franchised utility, if any,
11 and notice of the application and hearing to the retail public
12 utility.

13 (c) The utility commission shall grant single certification
14 to the municipality. The utility commission shall also determine
15 whether single certification as requested by the municipality would
16 result in property of a retail public utility being rendered
17 useless or valueless to the retail public utility, and shall
18 determine in its order the monetary amount that is adequate and just
19 to compensate the retail public utility for such property. If the
20 municipality in its application has requested the transfer of
21 specified property of the retail public utility to the municipality
22 or to a franchised utility, the utility commission shall also
23 determine in its order the adequate and just compensation to be paid
24 for such property pursuant to the provisions of this section,
25 including an award for damages to property remaining in the
26 ownership of the retail public utility after single certification.
27 The order of the utility commission shall not be effective to

1 transfer property. A transfer of property may only be obtained
2 under this section by a court judgment rendered pursuant to
3 Subsection (d) or (e) [~~of this section~~]. The grant of single
4 certification by the utility commission shall go into effect on the
5 date the municipality or franchised utility, as the case may be,
6 pays adequate and just compensation pursuant to court order, or
7 pays an amount into the registry of the court or to the retail
8 public utility under Subsection (f). If the court judgment
9 provides that the retail public utility is not entitled to any
10 compensation, the grant of single certification shall go into
11 effect when the court judgment becomes final. The municipality or
12 franchised utility must provide to each customer of the retail
13 public utility being acquired an individual written notice within
14 60 days after the effective date for the transfer specified in the
15 court judgment. The notice must clearly advise the customer of the
16 identity of the new service provider, the reason for the transfer,
17 the rates to be charged by the new service provider, and the
18 effective date of those rates.

19 (d) In the event the final order of the utility commission
20 is not appealed within 30 days, the municipality may request the
21 district court of Travis County to enter a judgment consistent with
22 the order of the utility commission. In such event, the court shall
23 render a judgment that:

24 (1) transfers to the municipally owned utility or
25 franchised utility title to property to be transferred to the
26 municipally owned utility or franchised utility as delineated by
27 the utility commission's final order and property determined by the

1 utility commission to be rendered useless or valueless by the
2 granting of single certification; and

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

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

14 (1) transfers to the municipally owned utility or
15 franchised utility title to property requested by the municipality
16 to be transferred to the municipally owned utility or franchised
17 utility and located within the singly certificated area and
18 property determined by the court or jury to be rendered useless or
19 valueless by the granting of single certification; and

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

24 (g-1) The utility commission shall adopt rules governing
25 the evaluation of the factors to be considered in determining the
26 monetary compensation under Subsection (g). The utility commission
27 by rule shall adopt procedures to ensure that the total

1 compensation to be paid to a retail public utility under Subsection
2 (g) is determined not later than the 90th calendar day after the
3 date on which the utility commission determines that the
4 municipality's application is administratively complete.

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

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

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

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

20 (1) For an area incorporated by a municipality, the
21 compensation provided under Subsection (g) shall be determined by a
22 qualified individual or firm to serve as independent appraiser, who
23 shall be selected by the affected retail public utility, and the
24 costs of the appraiser shall be paid by the municipality. For an
25 area annexed by a municipality, the compensation provided under
26 Subsection (g) shall be determined by a qualified individual or
27 firm to which the municipality and the retail public utility agree

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

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

26 SECTION 2.57. Section 13.2551, Water Code, is amended to
27 read as follows:

1 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
2 condition to decertification or single certification under Section
3 13.254 or 13.255, and on request by an affected retail public
4 utility, the utility commission may order:

5 (1) the retail public utility seeking to provide
6 service to a decertified area to serve the entire service area of
7 the retail public utility that is being decertified; and

8 (2) the transfer of the entire certificate of public
9 convenience and necessity of a partially decertified retail public
10 utility to the retail public utility seeking to provide service to
11 the decertified area.

12 (b) The utility commission shall order service to the entire
13 area under Subsection (a) if the utility commission finds that the
14 decertified retail public utility will be unable to provide
15 continuous and adequate service at an affordable cost to the
16 remaining customers.

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

23 (1) transferring debt and other contract obligations;

24 (2) transferring real and personal property;

25 (3) establishing interim service rates for affected
26 customers during specified times; and

27 (4) other provisions necessary for the just and

1 reasonable allocation of assets and liabilities.

2 (d) The retail public utility seeking decertification shall
3 not charge the affected customers any transfer fee or other fee to
4 obtain service other than the retail public utility's usual and
5 customary rates for monthly service or the interim rates set by the
6 utility commission, if applicable.

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

10 SECTION 2.58. Sections 13.257(e), (i), (r), and (s), Water
11 Code, are amended to read as follows:

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

1 for:

2 (1) failing to provide the notice required by this
3 section to a purchaser before the execution of a binding contract of
4 purchase and sale or at or before the closing of the purchase and
5 sale contract if:

6 (A) the utility service provider did not file the
7 map of the certificated service area in the real property records of
8 the county in which the service area is located and with the utility
9 commission depicting the boundaries of the service area of the
10 utility service provider as shown in the real property records of
11 the county in which the service area is located; and

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

15 (2) unintentionally providing a notice required by
16 this section that is incorrect under the circumstances before the
17 execution of a binding contract of purchase and sale or at or before
18 the closing of the purchase and sale contract.

19 (i) If the notice is given at closing as provided by
20 Subsection (g), a purchaser, or the purchaser's heirs, successors,
21 or assigns, may not maintain an action for damages or maintain an
22 action against a seller, title insurance company, real estate
23 broker, or lienholder, or any agent, representative, or person
24 acting on behalf of the seller, company, broker, or lienholder, by
25 reason of the seller's use of the information filed with the utility
26 commission by the utility service provider or the seller's use of
27 the map of the certificated service area of the utility service

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

10 (r) A utility service provider shall:

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

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

20 (B) the Texas State Plane Coordinate System;

21 (C) verifiable landmarks, including a road,
22 creek, or railroad line; or

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

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

27 (s) Each county shall accept and file in its real property

1 records a utility service provider's map presented to the county
2 clerk under this section if the map meets filing requirements, does
3 not exceed 11 inches by 17 inches in size, and is accompanied by the
4 appropriate fee. The recording required by this section must be
5 completed not later than the 31st day after the date a utility
6 service provider receives a final order from the utility commission
7 granting an application for a new certificate or for an amendment to
8 a certificate that results in a change in the utility service
9 provider's service area.

10 SECTION 2.59. Sections 13.301(a), (b), (c), (d), (e), (f),
11 and (g), Water Code, are amended to read as follows:

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

19 (1) file a written application with the utility
20 commission; and

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

24 (b) The utility commission may require that the person
25 purchasing or acquiring the water or sewer system demonstrate
26 adequate financial, managerial, and technical capability for
27 providing continuous and adequate service to the requested area and

1 any areas currently certificated to the person.

2 (c) If the person purchasing or acquiring the water or sewer
3 system cannot demonstrate adequate financial capability, the
4 utility commission may require that the person provide a bond or
5 other financial assurance in a form and amount specified by the
6 utility commission to ensure continuous and adequate utility
7 service is provided.

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

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

19 (1) the application filed with the utility commission
20 or the public notice was improper;

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

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

1 (A) noncompliance with the requirements of the
2 utility commission, the commission, or the ~~[Texas]~~ Department of
3 State Health Services; or

4 (B) continuing mismanagement or misuse of
5 revenues as a utility service provider;

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

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

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

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

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

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

1 SECTION 2.60. Section 13.302, Water Code, is amended to
2 read as follows:

3 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC
4 UTILITY: REPORT. (a) A utility may not purchase voting stock in
5 another utility doing business in this state and a person may not
6 acquire a controlling interest in a utility doing business in this
7 state unless the person or utility files a written application with
8 the utility commission not later than the 61st day before the date
9 on which the transaction is to occur.

10 (b) The utility commission may require that a person
11 acquiring a controlling interest in a utility demonstrate adequate
12 financial, managerial, and technical capability for providing
13 continuous and adequate service to the requested area and any areas
14 currently certificated to the person.

15 (c) If the person acquiring a controlling interest cannot
16 demonstrate adequate financial capability, the utility commission
17 may require that the person provide a bond or other financial
18 assurance in a form and amount specified by the utility commission
19 to ensure continuous and adequate utility service is provided.

20 (d) The utility commission [~~executive director~~] may
21 [~~request that the commission~~] hold a public hearing on the
22 transaction if the utility commission [~~executive director~~]
23 believes that a criterion prescribed by Section 13.301(e) applies.

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

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

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

4 (f) If the utility commission decides to hold a hearing ~~[is~~
5 ~~requested]~~ or if the person or utility fails to make the application
6 to the utility commission as required, the purchase or acquisition
7 may not be completed unless the utility commission determines that
8 the proposed transaction serves the public interest. A purchase or
9 acquisition that is not completed in accordance with the provisions
10 of this section is void.

11 SECTION 2.61. Section 13.303, Water Code, is amended to
12 read as follows:

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

19 SECTION 2.62. Section 13.304, Water Code, is amended to
20 read as follows:

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

27 (b) A financial institution that forecloses on a utility or

1 on any part of the utility's facilities or property that are used to
2 provide utility service is not required to provide the 120-day
3 notice prescribed by Section 13.301, but shall provide written
4 notice to the utility commission and the commission before the 30th
5 day preceding the date on which the foreclosure is completed.

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

13 SECTION 2.63. Section 13.341, Water Code, is amended to
14 read as follows:

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

23 SECTION 2.64. Section 13.342, Water Code, is amended to
24 read as follows:

25 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING
26 SECURITIES. The utility commission may require the disclosure of
27 the identity and respective interests of every owner of any

1 substantial interest in the voting securities of any utility or its
2 affiliated interest. One percent or more is a substantial interest
3 within the meaning of this section.

4 SECTION 2.65. Section 13.343(a), Water Code, is amended to
5 read as follows:

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

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

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

15 SECTION 2.66. Section 13.381, Water Code, is amended to
16 read as follows:

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

20 SECTION 2.67. Section 13.382(a), Water Code, is amended to
21 read as follows:

22 (a) Any party represented by counsel who alleges that
23 existing rates are excessive or that rates prescribed by the
24 utility commission are excessive and who is a prevailing party in
25 proceedings for review of a utility commission order or decision
26 may in the same action recover against the regulation fund
27 reasonable fees for attorneys and expert witnesses and other costs

1 incurred by him before the utility commission and the court. The
2 amount of the attorney's fees shall be fixed by the court.

3 SECTION 2.68. Section 13.411, Water Code, is amended to
4 read as follows:

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

20 (b) If the utility commission or the executive director of
21 the commission has reason to believe that the failure of the owner
22 or operator of a water utility to properly operate, maintain, or
23 provide adequate facilities presents an imminent threat to human
24 health or safety, the utility commission or the executive director
25 shall immediately:

- 26 (1) notify the utility's representative; and
27 (2) initiate enforcement action consistent with:

1 (A) this subchapter; and

2 (B) procedural rules adopted by the utility
3 commission or the commission.

4 SECTION 2.69. Section 13.4115, Water Code, is amended to
5 read as follows:

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

16 SECTION 2.70. Sections 13.412(a), (f), and (g), Water Code,
17 are amended to read as follows:

18 (a) At the request of the utility commission or the
19 commission, the attorney general shall bring suit for the
20 appointment of a receiver to collect the assets and carry on the
21 business of a water or sewer utility that:

22 (1) has abandoned operation of its facilities;

23 (2) informs the utility commission or the commission
24 that the owner is abandoning the system;

25 (3) violates a final order of the utility commission
26 or the commission; or

27 (4) allows any property owned or controlled by it to be

1 used in violation of a final order of the utility commission or the
2 commission.

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

5 (1) failure to pay a bill or obligation owed to a
6 retail public utility or to an electric or gas utility with the
7 result that the utility service provider has issued a notice of
8 discontinuance of necessary services;

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

11 (3) failure to adequately maintain facilities,
12 resulting in potential health hazards, extended outages, or
13 repeated service interruptions;

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

16 (5) failure to secure an alternative available water
17 supply during an outage;

18 (6) displaying a pattern of hostility toward or
19 repeatedly failing to respond to the utility commission or the
20 commission or the utility's customers; and

21 (7) failure to provide the utility commission or the
22 commission with adequate information on how to contact the utility
23 for normal business and emergency purposes.

24 (g) Notwithstanding Section 64.021, Civil Practice and
25 Remedies Code, a receiver appointed under this section may seek
26 ~~[commission]~~ approval from the utility commission and the
27 commission to acquire the water or sewer utility's facilities and

1 transfer the utility's certificate of convenience and necessity.
2 The receiver must apply in accordance with Subchapter H.

3 SECTION 2.71. Section 13.413, Water Code, is amended to
4 read as follows:

5 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The
6 receiver may, subject to the approval of the court and after giving
7 notice to all interested parties, sell or otherwise dispose of all
8 or part of the real or personal property of a water or sewer utility
9 against which a proceeding has been brought under this subchapter
10 to pay the costs incurred in the operation of the receivership. The
11 costs include:

- 12 (1) payment of fees to the receiver for his services;
13 (2) payment of fees to attorneys, accountants,
14 engineers, or any other person or entity that provides goods or
15 services necessary to the operation of the receivership; and
16 (3) payment of costs incurred in ensuring that any
17 property owned or controlled by a water or sewer utility is not used
18 in violation of a final order of the utility commission or the
19 commission.

20 SECTION 2.72. Section 13.4131, Water Code, is amended to
21 read as follows:

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

1 under this chapter [~~commission orders~~].

2 (b) While supervising a utility, the utility commission may
3 require the utility to abide by conditions and requirements
4 prescribed by the utility commission, including:

5 (1) management requirements;

6 (2) additional reporting requirements;

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

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

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

20 SECTION 2.73. Sections 13.4132(a), (b), and (d), Water
21 Code, are amended to read as follows:

22 (a) The utility commission or the commission, after
23 providing to the utility notice and an opportunity to be heard by
24 the commissioners at a utility commission or commission meeting,
25 may authorize a willing person to temporarily manage and operate a
26 utility if the utility:

27 (1) has discontinued or abandoned operations or the

1 provision of services; or

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

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

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

11 SECTION 2.74. Sections 13.4133(a) and (c), Water Code, are
12 amended to read as follows:

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

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

1 SECTION 2.75. Sections 13.414(a) and (c), Water Code, are
2 amended to read as follows:

3 (a) Any retail public utility or affiliated interest that
4 violates this chapter, fails to perform a duty imposed on it, or
5 fails, neglects, or refuses to obey an order, rule, direction, or
6 requirement of the utility commission or the commission or decree
7 or judgment of a court is subject to a civil penalty of not less than
8 \$100 nor more than \$5,000 for each violation.

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

13 SECTION 2.76. Sections 13.4151(a), (b), (c), (d), (e), (f),
14 (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as
15 follows:

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

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

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

1 (2) with respect to the alleged violator:

2 (A) the history and extent of previous
3 violations;

4 (B) the degree of culpability, including whether
5 the violation was attributable to mechanical or electrical failures
6 and whether the violation could have been reasonably anticipated
7 and avoided;

8 (C) the demonstrated good faith, including
9 actions taken by the person, affiliated interest, or entity to
10 correct the cause of the violation;

11 (D) any economic benefit gained through the
12 violation; and

13 (E) the amount necessary to deter future
14 violations; and

15 (3) any other matters that justice requires.

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

1 ~~[commission]~~.

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

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

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

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

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

27 (i) Within the 30-day period immediately following the day

1 on which the utility commission's or commission's order is final, as
2 provided by Subchapter F, Chapter 2001, Government Code, the
3 person, affiliated interest, or retail public utility charged with
4 the penalty shall:

5 (1) pay the penalty in full; or

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

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

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

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

25 (k) Judicial review of the order or decision of the utility
26 commission or the commission assessing the penalty shall be under
27 the substantial evidence rule and may be instituted by filing a

1 petition with a district court in Travis County, as provided by
2 Subchapter G, Chapter 2001, Government Code.

3 (m) Notwithstanding any other provision of law, the utility
4 commission or the commission may compromise, modify, extend the
5 time for payment of, or remit, with or without condition, any
6 penalty imposed under this section.

7 SECTION 2.77. Section 13.417, Water Code, is amended to
8 read as follows:

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

16 SECTION 2.78. Section 13.418, Water Code, is amended to
17 read as follows:

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

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

1 SECTION 2.79. Section 13.501(7), Water Code, is amended to
2 read as follows:

3 (7) "Multiple use facility" means commercial or
4 industrial parks, office complexes, marinas, and others
5 specifically identified in utility commission rules with five or
6 more units.

7 SECTION 2.80. Section 13.502(e), Water Code, is amended to
8 read as follows:

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

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

16 (2) the property owner meets rental agreement
17 requirements established by the utility commission.

18 SECTION 2.81. Sections 13.503(a), (b), and (e), Water Code,
19 are amended to read as follows:

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

23 (b) Notwithstanding any other law, the utility commission
24 shall adopt rules and standards under which an owner, operator, or
25 manager of an apartment house, manufactured home rental community,
26 or multiple use facility that is not individually metered for water
27 for each rental or dwelling unit may install submetering equipment

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

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

1 SECTION 2.82. Section 13.5031, Water Code, is amended to
2 read as follows:

3 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any
4 other law, the utility commission shall adopt rules and standards
5 governing billing systems or methods used by manufactured home
6 rental community owners, apartment house owners, condominium
7 managers, or owners of other multiple use facilities for prorating
8 or allocating among tenants nonsubmetered master metered utility
9 service costs. In addition to other appropriate safeguards for the
10 tenant, those rules shall require that:

11 (1) the rental agreement contain a clear written
12 description of the method of calculation of the allocation of
13 nonsubmetered master metered utilities for the manufactured home
14 rental community, apartment house, or multiple use facility;

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

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

24 (4) the owner or condominium manager shall maintain
25 adequate records regarding the utility consumption of the
26 manufactured home rental community, apartment house, or multiple
27 use facility, the charges assessed by the retail public utility,

1 and the allocation of the utility costs to the tenants;

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

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

11 SECTION 2.83. Section 13.505, Water Code, is amended to
12 read as follows:

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

1 SECTION 2.84. Section 13.512, Water Code, is amended to
2 read as follows:

3 Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION
4 CONTRACTS. Any eligible city is authorized to enter into
5 privatization contracts if such action is recommended by the board
6 of utility trustees and authorized by the governing body of the
7 eligible city pursuant to an ordinance. Any privatization contract
8 entered into prior to the effective date of this Act is validated,
9 ratified, and approved. Each eligible city shall file a copy of its
10 privatization contract with the utility commission, for
11 information purposes only, within 60 days of execution or the
12 effective date of this Act, whichever is later.

13 SECTION 2.85. Section 13.513, Water Code, is amended to
14 read as follows:

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

1 purposes of this chapter [~~Chapter 13~~] with respect to such other
2 person or municipality.

3 SECTION 2.86. Section 49.352(c), Water Code, is amended to
4 read as follows:

5 (c) For purposes of this section, a municipality may obtain
6 single certification in the manner provided by Section 13.255,
7 except that the municipality may file an application with the
8 Public Utility Commission of Texas [~~commission~~] to grant single
9 certification immediately after the municipality provides notice
10 of intent to provide service as required by Section 13.255(b).

11 SECTION 2.87. Section 552.047(e), Local Government Code, is
12 amended to read as follows:

13 (e) Users residing within the established service area, but
14 outside the municipality's boundaries, may appeal rates
15 established for drainage charges under [~~to the Texas Natural~~
16 ~~Resource Conservation Commission as authorized by~~] Section
17 13.043(b), [~~of the~~] Water Code.

18 SECTION 2.88. Section 7201.004(b), Special District Local
19 Laws Code, is amended to read as follows:

20 (b) This section does not apply to:

21 (1) rules or regulations concerning potable water
22 quality standards; or

23 (2) conflicts relating to service areas or
24 certificates issued to the corporation or district by the Public
25 Utility Commission of Texas or the Texas Commission on
26 Environmental Quality.

27 SECTION 2.89. Section 7201.005(c), Special District Local

1 Laws Code, is amended to read as follows:

2 (c) District boundaries may be modified in accordance with
3 Chapters 13 and 49, Water Code, except that the boundaries must
4 include all territory in any area included under a certificate of
5 convenience and necessity issued by the Public Utility Commission
6 of Texas or the Texas Commission on Environmental Quality to the
7 district.

8 SECTION 2.90. Section 7201.102, Special District Local Laws
9 Code, is amended to read as follows:

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

17 SECTION 2.91. Section 8363.106(b), Special District Local
18 Laws Code, is amended to read as follows:

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

1 certification on the city's behalf in the manner provided by
2 Section 13.255(b), Water Code.

3 SECTION 2.92. Section 8363.251(a), Special District Local
4 Laws Code, is amended to read as follows:

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

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

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

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

22 (4) by the end of the fifth year after the effective
23 date of the Act enacting this chapter, the district has completed
24 construction of internal streets and water and sanitary sewer
25 facilities sufficient to serve at least 100 residential lots in the
26 district.

27 SECTION 2.93. Section 8801.201, Special District Local Laws

1 Code, is amended to read as follows:

2 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A
3 person who is required to convert to surface water under this
4 chapter and who purchases that water supply wholesale from a
5 political subdivision as defined by Section 12.013(b), Water Code,
6 may appeal to the Public Utility Commission of Texas [~~commission~~]
7 the rates the political subdivision charges to the person. Chapter
8 12, Water Code, and rules adopted under that chapter apply to an
9 appeal under this section.

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

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

16 SECTION 2.94. Section 8803.151(1), Special District Local
17 Laws Code, is amended to read as follows:

18 (1) "Commission" means the Public Utility Commission
19 of Texas [~~Commission on Environmental Quality~~].

20 SECTION 2.95. Section 8808.151(1), Special District Local
21 Laws Code, is amended to read as follows:

22 (1) "Commission" means the Public Utility Commission
23 of Texas [~~Commission on Environmental Quality~~].

24 SECTION 2.96. (a) On September 1, 2014, the following are
25 transferred from the Texas Commission on Environmental Quality to
26 the Public Utility Commission of Texas:

27 (1) the powers, duties, functions, programs, and

1 activities of the Texas Commission on Environmental Quality
2 relating to the economic regulation of water and sewer service,
3 including the issuance and transfer of certificates of convenience
4 and necessity, the determination of rates, and the administration
5 of hearings and proceedings involving those matters, under Section
6 12.013 and Chapter 13, Water Code, as provided by this Act;

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

11 (3) all property and records in the custody of the
12 Texas Commission on Environmental Quality that are related to a
13 power, duty, function, program, or activity transferred under this
14 Act and all funds appropriated by the legislature for that power,
15 duty, function, program, or activity.

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

22 (c) The Texas Commission on Environmental Quality and the
23 Public Utility Commission of Texas shall enter into a memorandum of
24 understanding that:

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

27 (2) establishes a plan for the identification and

1 transfer of the records, personnel, property, and unspent
2 appropriations of the Texas Commission on Environmental Quality
3 that are used for purposes of the commission's powers and duties
4 directly related to the economic regulation of water and sewer
5 service under Section 12.013 and Chapter 13, Water Code, as amended
6 by this Act; and

7 (3) establishes a plan for the transfer of all pending
8 applications, hearings, rulemaking proceedings, and orders
9 relating to the economic regulation of water and sewer service
10 under Section 12.013 and Chapter 13, Water Code, as amended by this
11 Act, from the Texas Commission on Environmental Quality to the
12 Public Utility Commission of Texas.

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

14 (1) is not required to be adopted by rule under Section
15 5.104, Water Code; and

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

17 (e) The executive directors of the Texas Commission on
18 Environmental Quality and the Public Utility Commission of Texas
19 may agree in the memorandum of understanding under this section to
20 transfer to the Public Utility Commission of Texas any personnel of
21 the Texas Commission on Environmental Quality whose functions
22 predominantly involve powers, duties, obligations, functions, and
23 activities related to the economic regulation of water and sewer
24 service under Section 12.013 and Chapter 13, Water Code, as amended
25 by this Act.

26 (f) The Texas Commission on Environmental Quality and the
27 Public Utility Commission of Texas shall periodically update the

1 Office of Public Utility Counsel on the anticipated contents of the
2 memorandum of understanding under this section during the
3 development of the memorandum.

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

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

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

24 (i) The transition team appointed under Subsection (h) of
25 this section shall provide monthly updates to the executive
26 directors of the Texas Commission on Environmental Quality and the
27 Public Utility Commission of Texas on the implementation of this

1 Act and provide a final report on the implementation to the
2 executive directors not later than September 1, 2014.

3 (j) A rule, form, policy, procedure, or decision of the
4 Texas Commission on Environmental Quality related to a power, duty,
5 function, program, or activity transferred under this Act continues
6 in effect as a rule, form, policy, procedure, or decision of the
7 Public Utility Commission of Texas and remains in effect until
8 amended or replaced by that agency. Notwithstanding any other law,
9 beginning September 1, 2013, the Public Utility Commission of Texas
10 may propose rules, forms, policies, and procedures related to a
11 function to be transferred to the Public Utility Commission of
12 Texas under this Act.

13 (k) The Public Utility Commission of Texas and the Texas
14 Commission on Environmental Quality shall adopt rules to implement
15 the changes in law made by this Act to Section 12.013 and Chapter
16 13, Water Code, not later than September 1, 2015.

17 (l) An affiliate of a Class A utility, as those terms are
18 defined by Section 13.002, Water Code, as amended by this Act, may
19 not file an application for a rate change on or after the effective
20 date of this Act unless the affiliated Class A utility has filed for
21 a rate change on or after that date. In relation to the application
22 filed by the affiliate of the Class A utility, the Public Utility
23 Commission of Texas:

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

27 (2) may require the affiliate to comply with the Class

1 A utility rate change process prescribed by Section 13.187, Water
2 Code, regardless of whether the affiliate is classified as a Class
3 A, B, or C utility under Section 13.002, Water Code, as amended by
4 this Act.

5 SECTION 2.97. (a) The Public Utility Commission of Texas
6 shall conduct a comparative analysis of the ratemaking authority of
7 the commission before the effective date of this Act and the
8 ratemaking authority of the commission after the transition
9 described in Section 2.96 of this article, to identify potential
10 for procedural standardization. The Public Utility Commission of
11 Texas shall issue a report of the analysis, with recommendations
12 regarding rate standardization, for consideration by the 84th
13 Legislature.

14 (b) The Public Utility Commission of Texas shall prepare a
15 report describing staffing changes related to the transition
16 described in Section 2.96 of this article, including reductions in
17 staff that the commission may realize as a result of consolidated
18 functions. The Public Utility Commission of Texas shall submit the
19 report to the Legislative Budget Board and the governor with the
20 legislative appropriations request for the 2016-2017 biennium.

21 SECTION 2.98. The Office of Public Utility Counsel shall
22 prepare a report describing staffing changes related to the changes
23 in law made to the duties of the office in this article, including
24 reductions in staff that the office may realize as a result of
25 consolidated functions. The Office of Public Utility Counsel shall
26 submit the report to the Legislative Budget Board and the governor
27 with the legislative appropriations request for the 2016-2017

1 biennium.

2 ARTICLE 3. EFFECTIVE DATE

3 SECTION 3.01. This Act takes effect September 1, 2013.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 24, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1600 by Cook (Relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, to the rates for water service, and to the functions of the Office of Public Utility Counsel; authorizing a fee.),
As Passed 2nd House

Estimated Two-year Net Impact to General Revenue Related Funds for HB1600, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	\$0
2015	\$0
2016	\$0
2017	\$0
2018	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Water Resource Management</i> 153	Change in Number of State Employees from FY 2013
2014	(\$597,822)	5.0
2015	(\$597,822)	5.0
2016	(\$1,650,449)	17.0
2017	(\$1,650,449)	17.0
2018	(\$1,650,449)	17.0

Fiscal Analysis

The bill would amend the Utilities Code, Water Code, Local Government Code, and the Special District Local Laws Code relating to the continuation and operation of the Public Utility Commission (PUC), to the transfer of certain functions from the Texas Commission on

Environmental Quality (TCEQ) to the PUC, to the rates for water service, and to the functions of the Office of Public Utility Counsel (OPUC). The PUC is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. The bill would continue the PUC for 10 years and would take effect September 1, 2013.

The bill would authorize the PUC to issue emergency cease-and-desist orders to electric industry participants and defines notice and hearing requirements for such orders. The bill would require the PUC to adopt rules to provide for the renewal of registrations or certificates for holders of a Certificate of Operating Authority and holders of a Service Provider Certificate of Operating Authority. The bill would repeal Section 64.003 of the Utilities Code, which contains requirements for the PUC to promote customer awareness of changes in the telecommunications market.

The bill would require the PUC to review and approve the budget, performance measures, and proposals for obtaining debt financing or re-financing of debt of an entity certified under Section 39.151 of the Utilities Code. The Electric Reliability Council of Texas (ERCOT) is certified under this section. The bill would also require the PUC to set a fee range for the system administration fee and review the fee to ensure that the revenues generated closely match the revenue necessary to fund ERCOT's budget.

The bill would transfer responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from TCEQ to the PUC, effective September 1, 2014. The bill would require the PUC and TCEQ to enter into a memorandum of understanding by August 1, 2014, to identify in detail the applicable powers and duties that are transferred and establish a plan for the execution of the transfer.

The bill would provide OPUC the authority to represent the interests of residential and small commercial customers in water and wastewater proceedings beginning September 1, 2013. The bill would also create three classes of water utilities based on the number of taps or connections and establish a different rate review procedure for each class. The bill would require the PUC and TCEQ to adopt rules, policies, and procedures to implement the modified ratemaking process included in the provisions of the bill no later than September 1, 2015.

The bill would take effect September 1, 2013.

Methodology

Based on information provided by the PUC and TCEQ, this analysis assumes the transfer of \$1,429,818 in General Revenue-Dedicated Water Resource Management Account funds and 20.0 full-time equivalents (FTEs) from TCEQ to the PUC beginning in fiscal year 2015 to transfer the authority outlined in the bill. This analysis also assumes that, in order to implement the modified ratemaking process required by the provisions of the bill, the PUC would require \$1,052,627 per year in General Revenue-Dedicated Water Resource Management Account funds and 12.0 FTEs, with a total salary cost of \$762,000. Additional expenses include \$30,480 in other personnel costs; \$33,528 in rent-machine costs; and estimated benefit costs of \$226,619 per year. This analysis assumes the modified ratemaking process would be implemented beginning in fiscal year 2016.

Based on information provided by OPUC, this analysis assumes that OPUC would require \$597,822 in General Revenue-Dedicated Water Resource Management Account funds each year and 5.0 FTEs to represent water and wastewater utility customers as provided by the provisions of the bill beginning in fiscal year 2014. Expenses include \$330,000 in annual salary costs; \$150,000

in professional services; \$2,500 in travel costs; \$17,180 in other operating expenses; and estimated benefit costs of \$98,142 each year.

Based on the analysis of the Sunset Advisory Committee, the PUC, TCEQ, the State Office of Administrative Hearings, and OPUC, it is assumed that the remaining duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. This analysis also assumes the transfer of \$184,000 in General Revenue-Dedicated Water Resource Management Account funds to the PUC from TCEQ in fiscal year 2015 to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility case hearings.

Technology

Based on information provided by the PUC and TCEQ, the provisions of the bill would have no significant technological impact. This analysis assumes any technological impacts associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 304 Comptroller of Public Accounts, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel, 582 Commission on Environmental Quality

LBB Staff: UP, SD, RB, MW, ED, TL, AG

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 14, 2013

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB1600** by Cook (Relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, to the rates for water service, and to the functions of the Office of Public Utility Counsel; authorizing a fee.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1600, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	\$0
2015	\$0
2016	\$0
2017	\$0
2018	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Water Resource Management</i> 153	Change in Number of State Employees from FY 2013
2014	(\$597,822)	5.0
2015	(\$597,822)	5.0
2016	(\$1,650,449)	17.0
2017	(\$1,650,449)	17.0
2018	(\$1,650,449)	17.0

Fiscal Analysis

The bill would amend the Utilities Code, Water Code, Local Government Code, and the Special District Local Laws Code relating to the continuation and operation of the Public Utility Commission (PUC), to the transfer of certain functions from the Texas Commission on

Environmental Quality (TCEQ) to the PUC, to the rates for water service, and to the functions of the Office of Public Utility Counsel (OPUC). The PUC is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. The bill would continue the PUC for 10 years and would take effect September 1, 2013.

The bill would authorize the PUC to issue emergency cease-and-desist orders to electric industry participants and defines notice and hearing requirements for such orders. The bill would require the PUC to adopt rules to provide for the renewal of registrations or certificates for holders of a Certificate of Operating Authority and holders of a Service Provider Certificate of Operating Authority. The bill would repeal Section 64.003 of the Utilities Code, which contains requirements for the PUC to promote customer awareness of changes in the telecommunications market.

The bill would require the PUC to review and approve the budget, performance measures, and proposals for obtaining debt financing or re-financing of debt of an entity certified under Section 39.151 of the Utilities Code. The Electric Reliability Council of Texas (ERCOT) is certified under this section. The bill would also require the PUC to set a fee range for the system administration fee and review the fee to ensure that the revenues generated closely match the revenue necessary to fund ERCOT's budget.

The bill would transfer responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from TCEQ to the PUC, effective September 1, 2014. The bill would require the PUC and TCEQ to enter into a memorandum of understanding by August 1, 2014, to identify in detail the applicable powers and duties that are transferred and establish a plan for the execution of the transfer.

The bill would provide OPUC the authority to represent the interests of residential and small commercial customers in water and wastewater proceedings beginning September 1, 2013. The bill would also create three classes of water utilities based on the number of taps or connections and establish a different rate review procedure for each class. The bill would require the PUC and TCEQ to adopt rules, policies, and procedures to implement the modified ratemaking process included in the provisions of the bill no later than September 1, 2015.

The bill would take effect September 1, 2013.

Methodology

Based on information provided by the PUC and TCEQ, this analysis assumes the transfer of \$1,429,818 in General Revenue-Dedicated Water Resource Management Account funds and 20.0 full-time equivalents (FTEs) from TCEQ to the PUC beginning in fiscal year 2015 to transfer the authority outlined in the bill. This analysis also assumes that, in order to implement the modified ratemaking process required by the provisions of the bill, the PUC would require \$1,052,627 per year in General Revenue-Dedicated Water Resource Management Account funds and 12.0 FTEs, with a total salary cost of \$762,000. Additional expenses include \$30,480 in other personnel costs; \$33,528 in rent-machine costs; and estimated benefit costs of \$226,619 per year. This analysis assumes the modified ratemaking process would be implemented beginning in fiscal year 2016.

Based on information provided by OPUC, this analysis assumes that OPUC would require \$597,822 in General Revenue-Dedicated Water Resource Management Account funds each year and 5.0 FTEs to represent water and wastewater utility customers as provided by the provisions of the bill beginning in fiscal year 2014. Expenses include \$330,000 in annual salary costs; \$150,000

in professional services; \$2,500 in travel costs; \$17,180 in other operating expenses; and estimated benefit costs of \$98,142 each year.

Based on the analysis of the Sunset Advisory Committee, the PUC, TCEQ, the State Office of Administrative Hearings, and OPUC, it is assumed that the remaining duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. This analysis also assumes the transfer of \$184,000 in General Revenue-Dedicated Water Resource Management Account funds to the PUC from TCEQ in fiscal year 2015 to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility case hearings.

Technology

Based on information provided by the PUC and TCEQ, the provisions of the bill would have no significant technological impact. This analysis assumes any technological impacts associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 304 Comptroller of Public Accounts, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel, 582 Commission on Environmental Quality

LBB Staff: UP, RB, MW, ED, TL, AG

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 8, 2013

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1600 by Cook (Relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, and to the functions of the Office of Public Utility Counsel; authorizing a fee.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1600, As Engrossed: a negative impact of (\$760,000) through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$760,000)
2015	\$0
2016	\$0
2017	\$0
2018	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2014	(\$760,000)
2015	\$0
2016	\$0
2017	\$0
2018	\$0

Fiscal Analysis

The bill would amend the Utilities Code, Water Code, Local Government Code, and the Special District Local Laws Code relating to the continuation and operation of the Public Utility Commission (PUC), to the transfer of certain functions from the Texas Commission on Environmental Quality (TCEQ) to the PUC, and to the functions of the Office of Public Utility

Counsel (OPUC). The PUC is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. The bill would continue PUC for 10 years and would take effect September 1, 2013.

The bill would require the PUC to conduct a study to determine effective means to promote wholesale sale of electric energy generated in this state for delivery into Mexico. In conducting the study, the PUC would be required to consider ways in which transmission lines may be routed or constructed in a manner least intrusive to recognized historical sites or ranches located less than 150 miles from the international border.

The bill would also require the PUC to conduct a cost-benefit analysis of any proposed significant market changes, defined as a change in the electric market reasonably expected to add more than \$100 million to annual energy costs to customers in the state, before authorizing the significant market change. In conducting the study, the PUC would be required to quantify the impacts of the change on electric prices, analyze adverse effects on retail electric providers, and compare the benefits of the change to these costs.

The bill would authorize the PUC to issue emergency cease-and-desist orders to electric industry participants and defines notice and hearing requirements for such orders. The bill would require the PUC to adopt rules to provide for the renewal of registrations or certificates for holders of a Certificate of Operating Authority and holders of a Service Provider Certificate of Operating Authority. The bill would repeal Section 64.003 of the Utilities Code, which contains requirements for the PUC to promote customer awareness of changes in the telecommunications market.

The bill would require the PUC to review and approve the budget, performance measures, and proposals for obtaining debt financing or re-financing of debt of an entity certified under Section 39.151 of the Utilities Code. The Electric Reliability Council of Texas (ERCOT) is certified under this section. The bill would also require the PUC to set a fee range for the system administration fee and review the fee to ensure that the revenues generated closely match the revenue necessary to fund ERCOT's budget.

The bill would transfer responsibility for regulating water and wastewater rates and services from TCEQ to the PUC, effective September 1, 2014. The bill would require the PUC and TCEQ to enter into a memorandum of understanding to identify in detail the applicable powers and duties that are transferred and establish a plan for the execution of the transfer.

The bill would transfer the authority to represent the interests of residential and small consumers in water and wastewater proceedings from the Office of Public Interest Counsel within the TCEQ to OPUC, effective September 1, 2014. The bill would require OPUC and TCEQ to enter into a memorandum of understanding to identify in detail the applicable powers and duties that are transferred and establish a plan for the execution of the transfer.

The bill would take effect September 1, 2013.

Methodology

Based on information provided by the PUC, it is assumed that conducting a report on certain border issues and a cost-benefit analysis of any significant market changes as provided by the bill would cause a significant fiscal impact to the state. This analysis assumes the PUC would require \$200,000 in fiscal year 2014 for professional fees and services costs to complete the study to determine effective means to promote the wholesale sale of electric energy generated in Texas for delivery into Mexico, based on the amount of engineering and routing expertise needed to

accomplish the parameters of the study.

This analysis also assumes the PUC would require \$560,000 in fiscal year 2014 for professional fees and services costs to complete a cost-benefit analysis of significant market changes, based on the cost of previous electric market structuring reports contracted by the PUC that required a similar level of qualitative and quantitative analysis. Similarly, it is assumed that the PUC would require an additional \$560,000 in General Revenue for each required cost-benefit analysis; however, the number of significant market changes proposed in each subsequent year by the PUC that would require a cost-benefit analysis cannot be determined and are not considered in the table above.

Based on the analysis of the Sunset Advisory Committee, the PUC, TCEQ, the State Office of Administrative Hearings, and OPUC, it is assumed that the remaining duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. This analysis assumes the transfer of \$1,429,818 in General Revenue-Dedicated Water Resource Management Account funds and 20.0 FTEs from TCEQ to the PUC in fiscal year 2015 to transfer the authority outlined in the bill. This analysis also assumes that 1.0 FTE and \$80,847 in General Revenue-Dedicated Water Resource Management Account funds would be transferred from the Office of Public Interest Counsel in TCEQ to OPUC in fiscal year 2015 along with the authority to represent the interests of residential and small commercial customers provided by the bill. This analysis also assumes the transfer of \$184,000 in General Revenue-Dedicated Water Resource Management Account funds to the PUC from TCEQ in fiscal year 2015 to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility case hearings.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel, 582 Commission on Environmental Quality

LBB Staff: UP, RB, MW, ED, AG

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 6, 2013

TO: Honorable Byron Cook, Chair, House Committee On State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1600 by Cook (Relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, and to the functions of the Office of Public Utility Counsel; authorizing a fee.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Utilities Code, Water Code, Local Government Code, and the Special District Local Laws Code relating to the continuation and operation of the Public Utility Commission (PUC), to the transfer of certain functions from the Texas Commission on Environmental Quality (TCEQ) to the PUC, and to the functions of the Office of Public Utility Counsel (OPUC). PUC is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. The bill would continue PUC for 10 years and would take effect September 1, 2013.

The bill would authorize PUC to issue emergency cease-and-desist orders to electric industry participants and defines notice and hearing requirements for such orders. The bill would require the PUC to adopt rules to provide for the renewal of registrations or certificates for holders of a Certificate of Operating Authority and holders of a Service Provider Certificate of Operating Authority. The bill would repeal Section 64.003 of the Utilities Code, which contains requirements for the PUC to promote customer awareness of changes in the telecommunications market.

The bill would require the PUC to review and approve the budget, performance measures, and proposals for obtaining debt financing or re-financing of debt of an entity certified under Section 39.151 of the Utilities Code. The Electric Reliability Council of Texas (ERCOT) is certified under this section. The bill would also require the PUC to set a fee range for the system administration fee and review the fee quarterly to ensure that the revenues generated closely match the revenue necessary to fund ERCOT's budget.

The bill would transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC, effective September 1, 2014. The bill would require the PUC and TCEQ to enter into a memorandum of understanding to identify in detail the applicable powers and duties that are transferred and establish a plan for the execution of the transfer.

The bill would transfer the authority to represent the interests of residential and small consumers in water and wastewater proceedings from the Office of Public Interest Counsel within the TCEQ to OPUC, effective September 1, 2014. The bill would require OPUC and TCEQ to enter into a

memorandum of understanding to identify in detail the applicable powers and duties that are transferred and establish a plan for the execution of the transfer.

Based on the analysis of the Sunset Advisory Committee, PUC, TCEQ, the State Office of Administrative Hearings, and OPUC, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. This analysis assumes the transfer of \$1,429,818 in General Revenue-Dedicated Water Resource Management Account funds and 20.0 FTEs from TCEQ to PUC in fiscal year 2015 to transfer the authority outlined in the bill. This analysis also assumes that 1.0 FTE and \$80,847 in General Revenue-Dedicated Water Resource Management Account funds would be transferred from the Office of Public Interest Counsel in TCEQ to OPUC in fiscal year 2015 along with the authority to represent the interests of residential and small commercial customers provided by the bill. This analysis also assumes the transfer of \$184,000 in General Revenue-Dedicated Water Resource Management Account funds to the PUC from TCEQ in fiscal year 2015 to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility case hearings.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel, 582 Commission on Environmental Quality

LBB Staff: UP, AG, MW, ED