

BILL ANALYSIS

Senate Research Center

S.B. 700
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Water & Rural Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2013, the Texas Legislature transferred responsibility for rate and other economic regulation of water and wastewater utilities from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission of Texas (PUC). This transfer was based in part on a finding by the Sunset Advisory Commission that PUC, as a ratemaking agency, was best positioned to regulate water and wastewater utility rates. While the transfer has been successful, interested parties note that certain improvements could be made to ensure that water utilities—most of which pale in comparison to the size of the electric utilities that PUC also regulates—are able to navigate the rate approval process and make needed upgrades to their system.

S.B. 700 makes changes to the procedures for water ratemaking cases to improve and streamline the ratemaking process for utilities and consumers. (Original Author's/Sponsor's Statement of Intent)

S.B. 700 amends current law relating to retail public utilities that provide water or sewer service.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas (PUC) in SECTION 4 (Section 13.183, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 12 (Section 5.501(c), Water Code) of this bill.

Rulemaking authority previously granted to the regulatory authority is modified in SECTION 4 (Section 13.183, Water Code) of this bill.

Rulemaking authority previously granted to the PUC is modified in SECTION 6 (Section 13.1871, Water Code), SECTION 9 (Section 13.1872, Water Code) and SECTION 10 (Section 13.1873, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.002, Water Code, by amending Subdivisions (4-b) and (4-c) and adding Subdivision (4-d), as follows:

(4-b) Redefines "Class B utility" as a public utility that provides retail water or sewer utility service through 2,300 or more taps or connections, rather than 500 or more taps or connections, but fewer than 10,000 taps or connections.

(4-c) Redefines "Class C utility" as a public utility that provides retail water or sewer utility service through 500 or more taps or connections but fewer than 2,300 taps or connections, rather than fewer than 500 taps or connections.

(4-d) Defines "Class D utility."

SECTION 2. Amends Section 13.041, Water Code, by amending Subsection (d) and adding Subsections (h), (i), and (j), as follows:

(d) Authorizes the Public Utility Commission of Texas (PUC), in accordance with Subchapter K-1 (Emergency Orders), to issue emergency orders, with or without a hearing, to compel a retail public utility, rather than a water or sewer service provider, that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the retail public utility's actions or failure to act, rather than the service provider's actions or failure to act.

(h) Authorizes the Texas Commission on Environmental Quality (TCEQ), in accordance with Subchapter L (Emergency and Temporary Orders), Chapter 5 (Texas Commission on Environmental Quality), to issue emergency orders, with or without a hearing:

(1) to compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of TCEQ if necessary to ensure safe drinking water or environmental protection; and

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

(i) Authorizes the PUC, on request by TCEQ, to on an expedited basis establish reasonable compensation for the temporary service required under Subsection (h)(2) and to allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(j) Provides that, if an order is issued under Subsection (h) without a hearing, notice of a hearing under Section 5.504 (Hearing to Affirm, Modify, or Set Aside Order) to affirm, modify, or set aside the order is adequate if the notice is mailed or hand delivered to the last known address of the retail public utility's headquarters.

SECTION 3. Amends Section 13.046, Water Code, by adding Subsection (d), as follows:

(d) Requires the PUC, at the time the PUC approves the acquisition of a nonfunctioning retail water or sewer utility service provider under Section 13.301 (Report of Sale, Merger, etc.; Investigation; Disallowance of Transaction), to determine the duration of the temporary rates for the retail public utility, which must be for a reasonable period, and rule on the reasonableness of the temporary rates under Subsection (b) (relating to the types of rules and processes the PUC is authorized to establish regarding the takeover of a nonfunctioning water or sewer service) if the PUC did not make a ruling before the application was filed under Section 13.301.

SECTION 4. Amends Section 13.183(c), Water Code, as follows:

(c) Authorizes the regulatory authority, to ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, to by rule or ordinance, as appropriate, adopt specific alternative ratemaking methodologies for water or sewer rates to allow for more timely and efficient cost recovery, rather than based on factors other than rate of return and those specified in Section 13.185 (Components of Invested Capital and Net Income). Provides that appropriate alternative ratemaking methodologies are the introduction of new customer classes, the cash needs method, and phased and multi-step rate changes. Authorizes the regulatory authority to adopt system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment. Requires the PUC by rule to establish a schedule that requires all utilities that have implemented a system improvement charge approved by the PUC to make periodic filings with the PUC to modify or review base rates charged by the utility.

SECTION 5. Amends Section 13.187(a-1), Water Code, to require the statement of intent sent by a utility to a ratepayer and to the regulatory authority in certain circumstances to include certain information, including a billing comparison regarding the existing water rate and the new water rate computed for the use of 5,000 and 10,000 gallons of water, rather than 10,000 and 30,000 gallons of water, and a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 5,000 gallons, rather than 10,000 gallons, unless the utility proposes a flat rate for sewer services.

SECTION 6. Amends Sections 13.1871(a), (b), and (d), Water Code, as follows:

(a) Provides that, except as provided by Sections 13.18715 and 13.1872, rather than except as provided by Section 13.1872, this section applies only to a Class B utility.

(b) Makes conforming changes to this subsection.

(d) Deletes existing text requiring the PUC, in adopting rules relating to the information required in the application, to ensure that a utility can file a less burdensome and complex application than is required of a Class A utility.

SECTION 7. Amends Subchapter F, Chapter 13, Water Code, by adding Section 13.18715, as follows:

Sec. 13.18715. CLASS C UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Provides that this section only applies to a Class C utility.

(b) Prohibits a utility from making changes in its rates except by complying with the procedures to change rates described by Section 13.1871 (Class B Utilities: Statement of Intent to Change Rates; Hearing; Determination of Rate Level).

(c) Authorizes the utility, notwithstanding Section 13.1871(n) (relating to a utility mailing a notice of a hearing about rate changes), to send the notice required by that subsection by mail or e-mail or to deliver a copy of the notice to the ratepayers.

SECTION 8. Amends the heading to Section 13.1872, Water Code, to read as follows:

Sec. 13.1872. CLASS D UTILITIES: RATE ADJUSTMENT.

SECTION 9. Amends Section 13.1872, Water Code, by amending Subsections (a) and (e), and adding Subsection (c-1), as follows:

(a) Provides that this section applies only to a Class D utility, rather than to a Class C utility.

(c-1) Authorizes a utility that chooses to comply with Section 13.1871 as authorized under Subsection (c)(2) (relating to exceptions to the prohibition on utilities making rate changes) of this section to send the notice required by Section 13.1871(n) by mail or e-mail or to deliver a copy of the notice to the ratepayers.

(e) Deletes existing text requiring the procedures adopted by the PUC by rule regarding allowing a utility to receive without a hearing an annual rate adjustment to be based on changes in the price index. Requires the rules to provide that an annual rate adjustment described by this section is prohibited from resulting in a rate increase to any class or category of ratepayer of more than five percent, rather than more than the lesser of five percent or the percentage increase in the price index between the year preceding the year in which the utility requests the adjustment and the year in which the utility requests the adjustment.

SECTION 10. Amends Subchapter F, Chapter 13, Water Code, by adding Section 13.1873, as follows:

Sec. 13.1873. APPLICATION RULES. Requires the PUC, in adopting rules relating to the information required in an application for a Class B, Class C, or Class D utility to change rates, to ensure that a Class B utility can file a less burdensome and complex application than is required of a Class A utility and that a Class C or Class D utility can file a less burdensome and complex application than is required of a Class A or Class B utility.

SECTION 11. Amends Section 13.258(a), Water Code, to authorize a Class A utility, notwithstanding any other provision of this chapter (Water Rates and Services), to apply to the PUC, rather than TCEQ, for an amendment of a certificate of convenience and necessity held by a municipal utility district to allow the utility to have the same rights and powers under the certificate as the municipal utility district.

SECTION 12. Amends Section 5.501(c), Water Code, as follows:

(c) Authorizes the TCEQ by order or by rule to delegate to the executive director of TCEA the authority to:

- (1) receive applications and issue emergency orders under this subchapter (Emergency and Temporary Orders) and Section 13.041(h), rather than under this subchapter; and
- (2) authorize, in writing, a representative or representatives to act on the executive director's behalf under this subchapter and Section 13.041(h), rather than under this subchapter.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Repealer: Section 13.1872(b) (relating to the definition of "price index"), Water Code.

SECTION 15. Effective date: September 1, 2019.