

By: Phelan

H.B. No. 3542

A BILL TO BE ENTITLED

AN ACT

relating to the provision of water and sewer services by certain retail public utilities.

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

SECTION 1. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.150 to read as follows:

Sec. 13.150. REPORTS REQUIRED FOR WATER AND SEWER UTILITIES. (a) This section applies only to a utility that provides retail water or sewer utility service through fewer than 10,000 taps or connections.

(b) Except as provided by Subsection (c), a utility shall deliver to the utility commission a report of the utility's financial, managerial, and technical capacity to provide continuous and adequate service to its customers not later than the third anniversary of the date that the utility violates a final order of the commission by failing to:

(1) provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;

(2) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(3) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a

1 chemical treatment or pathogen inactivation or removal process.

2 (c) A utility that has an existing obligation to deliver a
3 report under Subsection (b) is not required to deliver another
4 report as a result of the occurrence of an event described by
5 Subsection (b) if the event occurs before the date that the utility
6 delivers the report required by Subsection (b).

7 (d) On receiving notice that a utility has violated an order
8 described by Subsection (b), the commission shall provide written
9 notice of the violation to the utility commission.

10 (e) The utility commission shall deliver a copy of a report
11 received under Subsection (b) to:

12 (1) each state senator representing a district that
13 contains a portion of the service area of the utility that submitted
14 the report; and

15 (2) each state representative representing a district
16 that contains a portion of the service area of the utility that
17 submitted the report.

18 (f) If a utility fails to deliver a report in accordance
19 with Subsection (b), the utility commission shall report the
20 failure to:

21 (1) the commission;

22 (2) each state senator representing a district that
23 contains a portion of the utility's service area; and

24 (3) each state representative representing a district
25 that contains a portion of the utility's service area.

26 SECTION 2. Subchapter H, Chapter 13, Water Code, is amended
27 by adding Section 13.305 to read as follows:

1 Sec. 13.305. VOLUNTARY VALUATION OF ACQUIRED UTILITY OR
2 FACILITIES. (a) In this section:

3 (1) "Acquiring utility" means a Class A or Class B
4 utility that is acquiring a selling utility, or facilities of a
5 selling utility, as the result of a voluntary arm's-length
6 transaction.

7 (2) "Ratemaking rate base" means the dollar value of a
8 selling utility that is incorporated into the rate base of the
9 acquiring utility for postacquisition ratemaking purposes.

10 (3) "Selling utility" means a retail public utility
11 that is being purchased by an acquiring utility, or is selling
12 facilities to an acquiring utility, as the result of a voluntary
13 arm's-length transaction.

14 (b) The utility commission shall maintain a list of experts
15 qualified to conduct economic valuations of utilities for the
16 purposes of this section.

17 (c) An acquiring utility and a selling utility may agree to
18 determine by the following process the fair market value of the
19 selling utility or the facilities to be sold, as applicable:

20 (1) the acquiring utility and the selling utility
21 shall notify the utility commission of their intent to determine
22 the fair market value under this section;

23 (2) not later than the 30th day after the date the
24 utility commission receives notice under Subdivision (1), the
25 utility commission shall select three utility valuation experts
26 from the list maintained under Subsection (b);

27 (3) each utility valuation expert shall perform an

1 appraisal in compliance with Uniform Standards of Professional
2 Appraisal Practice, employing the cost, market, and income
3 approaches, to determine the fair market value; and

4 (4) the three utility valuation experts selected under
5 Subdivision (2) jointly shall retain a licensed engineer to conduct
6 an assessment of the tangible assets of the selling utility, or the
7 facilities to be sold, as applicable, and each utility valuation
8 expert shall:

9 (A) incorporate the assessment into the
10 appraisal under the cost approach required under Subdivision (3);
11 and

12 (B) provide the completed appraisal to the
13 acquiring utility and the selling utility in a reasonable and
14 timely manner.

15 (d) A utility valuation expert described by Subsection (b)
16 may not:

17 (1) derive any material financial benefit from the
18 sale other than fees for services rendered; or

19 (2) be or have been within the year preceding the date
20 the service contract is executed an immediate family member of a
21 director, officer, or employee of the acquiring utility or the
22 selling utility.

23 (e) A fee paid to a utility valuation expert may be included
24 in the transaction and closing costs associated with the
25 acquisition by the acquiring utility. A fee may not exceed the
26 lesser of:

27 (1) five percent of the fair market value; or

1 (2) a fee amount approved by the utility commission.

2 (f) For the purposes of the acquisition, the fair market
3 value is the average of the three utility valuation expert
4 appraisals conducted under Subsection (c).

5 (g) For an acquisition of a selling utility, the ratemaking
6 rate base of the selling utility is the lesser of the purchase price
7 negotiated by the acquiring utility and the selling utility or the
8 fair market value. The ratemaking rate base of the selling utility
9 shall be incorporated into the rate base of the acquiring utility
10 during the utility's next rate base case under Subchapter F.

11 (h) If the acquiring utility and the selling utility use the
12 process for establishing fair market value in Subsection (c), the
13 acquiring utility shall submit as attachments to an application
14 required under Section 13.301:

15 (1) copies of the three appraisals performed by the
16 utility valuation experts under Subsection (c);

17 (2) the purchase price agreed to by the acquiring
18 utility and the selling utility;

19 (3) if applicable, the ratemaking rate base determined
20 under Subsection (g);

21 (4) if applicable, the transaction and closing costs
22 incurred by the acquiring utility that will be included in the
23 utility's rate base; and

24 (5) if applicable, a tariff containing a rate equal to
25 the existing rates of the selling utility at the time of the
26 acquisition.

27 (i) If the utility commission approves the application for

1 acquisition under Section 13.301, the utility commission shall
2 issue an order that includes:

3 (1) the ratemaking rate base of the selling utility as
4 determined under Subsection (g); and

5 (2) any additional conditions for the acquisition the
6 utility commission requires.

7 (j) A tariff submitted under Subsection (h)(5) shall remain
8 in effect until the utility commission approves new rates as part of
9 a rate base case proceeding.

10 (k) The original sources of funding for any part of the
11 water or sewer assets of the selling utility are not relevant to
12 determine the value of the selling utility's assets. The selling
13 utility's cost of service shall be incorporated into the revenue
14 requirement of the acquiring utility's next rate base case
15 proceeding.

16 (l) In this subsection, "allowance of funds used during
17 construction" means an accounting practice that recognizes the
18 capital costs, including debt and equity funds, that are used to
19 finance the construction costs of an improvement to a selling
20 utility's assets by an acquiring utility. An acquiring utility's
21 postacquisition improvements shall accrue an allowance of funds
22 used during construction after the date the cost was incurred until
23 the earlier of:

24 (1) the fourth anniversary of the date the asset
25 entered into service; or

26 (2) the inclusion of the asset in the acquiring
27 utility's next rate base case.

1 (m) Depreciation on an acquiring utility's postacquisition
2 improvements shall be deferred for book and ratemaking purposes.

3 SECTION 3. Section 13.4132(a), Water Code, is amended to
4 read as follows:

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

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

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

14 (3) provides retail water or sewer utility service
15 through fewer than 10,000 taps or connections and violates a final
16 order of the commission by failing to:

17 (A) provide system capacity that is greater than
18 the required raw water or groundwater production rate or the
19 anticipated daily demand of the system;

20 (B) provide a minimum pressure of 35 pounds per
21 square inch throughout the distribution system under normal
22 operating conditions; or

23 (C) maintain accurate or properly calibrated
24 testing equipment or other means of monitoring the effectiveness of
25 a chemical treatment or pathogen inactivation or removal process.

26 SECTION 4. (a) Except as provided by Subsection (b) of this
27 section, a utility that provides retail water or sewer utility

1 service through fewer than 10,000 taps or connections and that, not
2 more than three years before the effective date of this Act,
3 violated an order described by Section 13.150(b), Water Code, as
4 added by this Act, shall submit a report described by Section
5 13.150(b), Water Code, as added by this Act, not later than the
6 fifth anniversary of the event.

7 (b) A utility that provides retail water or sewer utility
8 service through fewer than 10,000 taps or connections and that has
9 an existing obligation to deliver a report under Subsection (a) of
10 this section is not required to deliver another report as a result
11 of the occurrence of an event described by Section 13.150(b), Water
12 Code, as added by this Act, if the event occurs before the date that
13 the utility delivers the report required by Subsection (a) of this
14 section.

15 SECTION 5. This Act takes effect September 1, 2019.