

1-1 By: Phelan (Senate Sponsor - Lucio) H.B. No. 3542
 1-2 (In the Senate - Received from the House May 2, 2019;
 1-3 May 3, 2019, read first time and referred to Committee on Water &
 1-4 Rural Affairs; May 19, 2019, reported favorably by the following
 1-5 vote: Yeas 7, Nays 0; May 19, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to the provision of water and sewer services by certain
 1-18 retail public utilities.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Subchapter E, Chapter 13, Water Code, is amended
 1-21 by adding Section 13.150 to read as follows:

1-22 Sec. 13.150. REPORTS REQUIRED FOR WATER AND SEWER
 1-23 UTILITIES. (a) This section applies only to a utility that
 1-24 provides retail water or sewer utility service through fewer than
 1-25 10,000 taps or connections.

1-26 (b) Except as provided by Subsection (c), a utility shall
 1-27 deliver to the utility commission a report of the utility's
 1-28 financial, managerial, and technical capacity to provide
 1-29 continuous and adequate service to its customers not later than the
 1-30 third anniversary of the date that the utility violates a final
 1-31 order of the commission by failing to:

1-32 (1) provide system capacity that is greater than the
 1-33 required raw water or groundwater production rate or the
 1-34 anticipated daily demand of the system;

1-35 (2) provide a minimum pressure of 35 pounds per square
 1-36 inch throughout the distribution system under normal operating
 1-37 conditions; or

1-38 (3) maintain accurate or properly calibrated testing
 1-39 equipment or other means of monitoring the effectiveness of a
 1-40 chemical treatment or pathogen inactivation or removal process.

1-41 (c) A utility that has an existing obligation to deliver a
 1-42 report under Subsection (b) is not required to deliver another
 1-43 report as a result of the occurrence of an event described by
 1-44 Subsection (b) if the event occurs before the date that the utility
 1-45 delivers the report required by Subsection (b).

1-46 (d) On receiving notice that a utility has violated an order
 1-47 described by Subsection (b), the commission shall provide written
 1-48 notice of the violation to the utility commission.

1-49 (e) The utility commission shall deliver a copy of a report
 1-50 received under Subsection (b) to:

1-51 (1) each state senator representing a district that
 1-52 contains a portion of the service area of the utility that submitted
 1-53 the report; and

1-54 (2) each state representative representing a district
 1-55 that contains a portion of the service area of the utility that
 1-56 submitted the report.

1-57 (f) If a utility fails to deliver a report in accordance
 1-58 with Subsection (b), the utility commission shall report the
 1-59 failure to:

1-60 (1) the commission;

1-61 (2) each state senator representing a district that

2-1 contains a portion of the utility's service area; and

2-2 (3) each state representative representing a district
2-3 that contains a portion of the utility's service area.

2-4 SECTION 2. Subchapter H, Chapter 13, Water Code, is amended
2-5 by adding Section 13.305 to read as follows:

2-6 Sec. 13.305. VOLUNTARY VALUATION OF ACQUIRED UTILITY OR
2-7 FACILITIES. (a) In this section:

2-8 (1) "Acquiring utility" means a Class A or Class B
2-9 utility that is acquiring a selling utility, or facilities of a
2-10 selling utility, as the result of a voluntary arm's-length
2-11 transaction.

2-12 (2) "Rate-making rate base" means the dollar value of a
2-13 selling utility that is incorporated into the rate base of the
2-14 acquiring utility for postacquisition rate-making purposes.

2-15 (3) "Selling utility" means a retail public utility
2-16 that is being purchased by an acquiring utility, or is selling
2-17 facilities to an acquiring utility, as the result of a voluntary
2-18 arm's-length transaction.

2-19 (b) The utility commission shall maintain a list of experts
2-20 qualified to conduct economic valuations of utilities for the
2-21 purposes of this section.

2-22 (c) An acquiring utility and a selling utility may agree to
2-23 determine by the following process the fair market value of the
2-24 selling utility or the facilities to be sold, as applicable:

2-25 (1) the acquiring utility and the selling utility
2-26 shall notify the utility commission of their intent to determine
2-27 the fair market value under this section;

2-28 (2) not later than the 30th day after the date the
2-29 utility commission receives notice under Subdivision (1), the
2-30 utility commission shall select three utility valuation experts
2-31 from the list maintained under Subsection (b);

2-32 (3) each utility valuation expert shall perform an
2-33 appraisal in compliance with Uniform Standards of Professional
2-34 Appraisal Practice, employing the cost, market, and income
2-35 approaches, to determine the fair market value; and

2-36 (4) the three utility valuation experts selected under
2-37 Subdivision (2) jointly shall retain a licensed engineer to conduct
2-38 an assessment of the tangible assets of the selling utility, or the
2-39 facilities to be sold, as applicable, and each utility valuation
2-40 expert shall:

2-41 (A) incorporate the assessment into the
2-42 appraisal under the cost approach required under Subdivision (3);
2-43 and

2-44 (B) provide the completed appraisal to the
2-45 acquiring utility and the selling utility in a reasonable and
2-46 timely manner.

2-47 (d) A utility valuation expert described by Subsection (b)
2-48 may not:

2-49 (1) derive any material financial benefit from the
2-50 sale other than fees for services rendered; or

2-51 (2) be or have been within the year preceding the date
2-52 the service contract is executed an immediate family member of a
2-53 director, officer, or employee of the acquiring utility or the
2-54 selling utility.

2-55 (e) A fee paid to a utility valuation expert may be included
2-56 in the transaction and closing costs associated with the
2-57 acquisition by the acquiring utility. A fee may not exceed the
2-58 lesser of:

2-59 (1) five percent of the fair market value; or

2-60 (2) a fee amount approved by the utility commission.

2-61 (f) For the purposes of the acquisition, the fair market
2-62 value is the average of the three utility valuation expert
2-63 appraisals conducted under Subsection (c).

2-64 (g) For an acquisition of a selling utility, the rate-making
2-65 rate base of the selling utility is the lesser of the purchase price
2-66 negotiated by the acquiring utility and the selling utility or the
2-67 fair market value. The rate-making rate base of the selling utility
2-68 shall be incorporated into the rate base of the acquiring utility
2-69 during the utility's next rate base case under Subchapter F.

3-1 (h) If the acquiring utility and the selling utility use the
3-2 process for establishing fair market value in Subsection (c), the
3-3 acquiring utility shall submit as attachments to an application
3-4 required under Section 13.301:
3-5 (1) copies of the three appraisals performed by the
3-6 utility valuation experts under Subsection (c);
3-7 (2) the purchase price agreed to by the acquiring
3-8 utility and the selling utility;
3-9 (3) if applicable, the ratemaking rate base determined
3-10 under Subsection (g);
3-11 (4) if applicable, the transaction and closing costs
3-12 incurred by the acquiring utility that will be included in the
3-13 utility's rate base; and
3-14 (5) if applicable, a tariff containing a rate equal to
3-15 the existing rates of the selling utility at the time of the
3-16 acquisition.
3-17 (i) If the utility commission approves the application for
3-18 acquisition under Section 13.301, the utility commission shall
3-19 issue an order that includes:
3-20 (1) the ratemaking rate base of the selling utility as
3-21 determined under Subsection (g); and
3-22 (2) any additional conditions for the acquisition the
3-23 utility commission requires.
3-24 (j) A tariff submitted under Subsection (h)(5) shall remain
3-25 in effect until the utility commission approves new rates as part of
3-26 a rate base case proceeding.
3-27 (k) The original sources of funding for any part of the
3-28 water or sewer assets of the selling utility are not relevant to
3-29 determine the value of the selling utility's assets. The selling
3-30 utility's cost of service shall be incorporated into the revenue
3-31 requirement of the acquiring utility's next rate base case
3-32 proceeding.
3-33 (l) In this subsection, "allowance of funds used during
3-34 construction" means an accounting practice that recognizes the
3-35 capital costs, including debt and equity funds, that are used to
3-36 finance the construction costs of an improvement to a selling
3-37 utility's assets by an acquiring utility. An acquiring utility's
3-38 postacquisition improvements shall accrue an allowance of funds
3-39 used during construction after the date the cost was incurred until
3-40 the earlier of:
3-41 (1) the fourth anniversary of the date the asset
3-42 entered into service; or
3-43 (2) the inclusion of the asset in the acquiring
3-44 utility's next rate base case.
3-45 (m) Depreciation on an acquiring utility's postacquisition
3-46 improvements shall be deferred for book and ratemaking purposes.
3-47 SECTION 3. Section 13.4132(a), Water Code, is amended to
3-48 read as follows:
3-49 (a) The utility commission or the commission, after
3-50 providing to the utility notice and an opportunity to be heard by
3-51 the commissioners at a utility commission or commission meeting,
3-52 may authorize a willing person to temporarily manage and operate a
3-53 utility if the utility:
3-54 (1) has discontinued or abandoned operations or the
3-55 provision of services; ~~or~~
3-56 (2) has been or is being referred to the attorney
3-57 general for the appointment of a receiver under Section 13.412; or
3-58 (3) provides retail water or sewer utility service
3-59 through fewer than 10,000 taps or connections and violates a final
3-60 order of the commission by failing to:
3-61 (A) provide system capacity that is greater than
3-62 the required raw water or groundwater production rate or the
3-63 anticipated daily demand of the system;
3-64 (B) provide a minimum pressure of 35 pounds per
3-65 square inch throughout the distribution system under normal
3-66 operating conditions; or
3-67 (C) maintain accurate or properly calibrated
3-68 testing equipment or other means of monitoring the effectiveness of
3-69 a chemical treatment or pathogen inactivation or removal process.

4-1 SECTION 4. (a) Except as provided by Subsection (b) of this
4-2 section, a utility that provides retail water or sewer utility
4-3 service through fewer than 10,000 taps or connections and that, not
4-4 more than three years before the effective date of this Act,
4-5 violated an order described by Section 13.150(b), Water Code, as
4-6 added by this Act, shall submit a report described by Section
4-7 13.150(b), Water Code, as added by this Act, not later than the
4-8 fifth anniversary of the event.

4-9 (b) A utility that provides retail water or sewer utility
4-10 service through fewer than 10,000 taps or connections and that has
4-11 an existing obligation to deliver a report under Subsection (a) of
4-12 this section is not required to deliver another report as a result
4-13 of the occurrence of an event described by Section 13.150(b), Water
4-14 Code, as added by this Act, if the event occurs before the date that
4-15 the utility delivers the report required by Subsection (a) of this
4-16 section.

4-17 SECTION 5. This Act takes effect September 1, 2019.

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