

BILL ANALYSIS

S.B. 567
By: Watson
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 567 transfers the economic regulation of water and wastewater utilities from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission of Texas (PUC) and gives the Office of Public Utility Counsel (OPUC) authority to intervene in water rate cases on behalf of residential and small commercial customers. Additionally, the bill establishes investor-owned utility (IOU) classifications based on connection count thus ending the one-size-fits-all treatment for IOU rate setting. Under these proposed classes, the largest IOU would be distinguished from the smallest IOU and an IOU's proposed rate would not automatically go into effect until finally approved.

During the 82nd Legislature, the Sunset Advisory Commission recommended that "the state could benefit from transferring regulatory functions related to water and wastewater utilities to PUC." However, the PUC sunset bill did not pass and the utility rate setting function did not transfer. The Sunset Advisory Commission has reaffirmed the recommendation that water and wastewater utility ratemaking functions be transferred to PUC and that OPUC be authorized to intervene in water rate cases on behalf of residential and small commercial customers.

In addition to the Sunset review, subcommittees of the Senate Natural Resources Committee and Business and Commerce Committee held hearings that established support for ending the one-size-fits-all treatment for IOU rate setting and establishing utility classifications based on connection count.

Under the bill, Class A utilities (an investor-owned utility with 10,000 connections or more) will follow a ratemaking process similar to the Public Utility Regulatory Act (PURA) that is currently used for electric rate increases. A Class A utility will file detailed costs, rate schedules, and pre-filed testimony supporting the requested rate increase at the time the IOU applies for the rate increase, and a final rate determination will be required to be made within 185 days. Additionally, a Class A utility would be required to file annual financial and earnings monitoring reports with PUC, similar to what is currently required for electric companies.

Class B utilities (an IOU with 500 to 10,000 connections) would file an abbreviated rate-filing package more like what is currently required by TCEQ rules providing essential cost-of-service and rate base information, but pre-filed testimony would come later if the application became contested.

Class C utilities (an IOU with 500 connections or less) will be allowed the option to request an annual rate adjustment based on a predetermined index not to exceed more than a five percent increase. This will encourage appropriate and timely investment in infrastructure for the state's smallest IOUs. Adjustments could go into effect 30 days after proper notice to customers if the adjustment is equal to or lower than PUC's established water utility index for that year. If the adjustment is greater than the established index, the rate application will follow the Class B process. A Class C utility will be allowed only one adjustment every 12 months, with no more than four total adjustments prior to the Class C utility filing a Class B rate application.

S.B. 567 amends current law relating to rates for water service, to the transfer of functions relating to the economic regulation of water and sewer service from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, and to the duties of the Office of Public Utility Counsel regarding the economic regulation of water and sewer service.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is transferred to the Public Utility Commission (PUC) through changes in law to SECTIONS 17, 22, 26, 27, 29, 32, 33, 39, 40, 41, 53, 54, 60, 79 and 80 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to PUC in SECTIONS 13, 26, 36, 37, 38, 63, and 92 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to PUC and TCEQ in sections throughout this bill, and in SECTIONS 92 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the applicable regulatory authority in SECTION 38 of this bill.

ANALYSIS

SECTION 1. Amends Section 5.013(a), Water Code, to delete existing text of Subdivision (12) providing that the Texas Commission on Environmental Quality (TCEQ) has general jurisdiction over administration of the state's water rate program under Chapter 13 (Water Rates and Services) of this code. Makes nonsubstantive changes.

SECTION 2. Amends Section 5.311(a), Water Code, to authorize TCEQ to delegate to an administrative law judge of the State Office of Administrative Hearings (SOAH) the responsibility to hear any matter before TCEQ. Strikes a provision that authorizes the TCEQ to delegate to an administrative law judge of SOAH the responsibility to issue interlocutory orders related to interim rates under Chapter 13.

SECTION 3. Amends Section 5.507, Water Code, to authorize TCEQ or the Public Utility Commission of Texas (PUC), rather than TCEQ alone, to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 13.4132 (Operation of Utility That Discontinues Operation or is Referred for Appointment of Receiver). Provides that notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 4. Amends Sections 5.508(a) and (c), Water Code, as follows:

(a) Authorizes PUC, notwithstanding the requirements of Subchapter F (Proceedings before Regulatory Authority), Chapter 13, to authorize an emergency rate increase for a utility for which a person has been appointed under Section 5.507 (Emergency Order for Operation of Utility that Discontinues Operation or is Referred for Appointment of Receiver) or 13.4132 or for which a receiver has been appointed under Section 13.412 (Receivership), if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers, rather than authorizing TCEQ, notwithstanding the requirements of Section 13.187 (Statement of Intent to Change Rates; Hearing; Determination of Rate Level), to authorize an emergency rate increase for a utility for which a person has been appointed under Section 5.507 or 13.412 or for which a receiver has been appointed under Section 13.4132. Requires PUC to consult with TCEQ as needed to carry out this section.

(c) Provides that notwithstanding Section 5.505, an order may be issued under this section for a term not to exceed 15 months. Requires PUC, rather than TCEQ, to schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. Provides that the additional revenues collected under an emergency rate increase are subject to refund if PUC, rather than TCEQ alone, finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 5. Amends Section 11.002, Water Code, by adding Subdivision (21) to define "utility commission" to mean the Public Utility Commission of Texas.

SECTION 6. Amends Section 11.041(f), Water Code, as follows:

(f) Requires TCEQ to hold a hearing on the complaint at the time and place stated in the order. Authorizes TCEQ to hear evidence orally or by affidavit in support of or against the complaint and to hear arguments. Authorizes PUC to participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. Requires TCEQ, on completion of the hearing, to render a written decision.

SECTION 7. Amends Section 12.013, Water Code, as follows:

Sec. 12.013. RATE-FIXING POWER. (a) Requires PUC, rather than TCEQ, to fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 (Water Rights) or 12 (Provisions Generally Applicable to Water Rights) of this code.

(b) Defines "political subdivision" in this section to mean incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) Authorizes PUC, rather than TCEQ, in reviewing and fixing reasonable rates for furnishing water under this section to use any reasonable basis for fixing rates as may be determined by PUC, rather than TCEQ, to be appropriate under the circumstances of the case being reviewed; prohibits, however, PUC, rather than TCEQ, from fixing a rate which a political subdivision is authorized to charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) Requires that PUC's jurisdiction, rather than TCEQ's jurisdiction, under this section relating to incorporated cities, towns, or villages be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) Authorizes PUC, rather than TCEQ, to establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) Authorizes PUC, rather than TCEQ, to order a refund or assess additional charges from the date a petition for rate review is received by PUC, rather than TCEQ, of the difference between the rate actually charged and the rate fixed by PUC, rather than TCEQ, plus interest at the statutory rate. Makes corresponding changes.

Deletes text of existing Subsection (g) requiring that no action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.

Deletes text of existing Subsection (h), requiring that nothing herein contained shall affect the jurisdiction of PUC.

Makes nonsubstantive and corresponding changes.

SECTION 8. Amends Section 13.002, Water Code, by amending Subdivisions (2), (18), and (22) and adding Subdivisions (4-a), (4-b), (4-c), and (22-a).

(2) Defines "affiliated interest" or "affiliate" to mean:

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

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

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

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

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

(F) any person or corporation that the PUC, rather than TCEQ, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, 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 PUC, rather than TCEQ, 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.

(4-a) Defines “class A utility” to mean a public utility that provides retail water or sewer utility service through 10,000 or more taps or connections.

(4-b) Defines “class B utility” to mean a public utility that provides retail water or sewer utility service through 500 or more taps or connections but fewer than 10,000 taps or connections.

(4-c) Defines “class C utility” to mean a public utility that provides retail water or sewer utility service through fewer than 500 taps or connections.

(18) Defines “regulatory authority” to mean, in accordance with the context in which it is found, the TCEQ, PUC, or the governing body of a municipality, rather than either the TCEQ or the governing body of a municipality.

(22) Defines “test year” to mean the most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available, rather than the most recent 12-month period for which representative operating data for a retail public utility are available. Strikes a provision requiring a utility rate filing to be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.

(22-a) Defines “utility commission” to mean the PUC.

SECTION 9. Amends Section 13.004, Water Code, as follows:

Sec. 13.004. New heading: JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Provides that PUC, rather than TCEQ, notwithstanding any other law, has the same jurisdiction over a water supply or sewer service corporation that PUC, rather than TCEQ, has under

this chapter over a water and sewer utility if PUC, rather than TCEQ, finds certain circumstances listed in existing law.

(b) Provides that if the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65 (Special Utility Districts), PUC's jurisdiction, rather than TCEQ's jurisdiction, provided by this section ends.

SECTION 10. Amends Section 13.011, Water Code, as follows:

Sec. 13.011. EMPLOYEES. (a) Requires PUC and the executive director, subject to approval, as applicable, by PUC or TCEQ, to employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter, rather than requiring the executive director, subject to approval by TCEQ, to employ any engineering, accounting, and administrative personnel necessary to carry out this chapter.

(b) Provides that the executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. Provides that PUC and PUC's staff are responsible for the gathering of information relating to all matters within the jurisdiction of PUC under this subchapter. Provides that the duties of PUC, the executive director, and the staff of PUC or TCEQ, rather than the duties of the executive director and staff, as appropriate, include:

(1) accumulation of evidence and other information from water and sewer utilities, from PUC or TCEQ, as appropriate, and the governing body of the respective agency, rather than accumulation of evidence and other information from water and sewer utilities and from TCEQ and the board, and from other sources for the purposes specified by this chapter;

(2) preparation and presentation of evidence before PUC or TCEQ, as appropriate, rather than TCEQ alone, or its appointed examiner in proceedings;

(3) conducting investigations of water and sewer utilities under the jurisdiction of PUC or TCEQ, as appropriate, rather than TCEQ alone;

(4) preparation of recommendations that PUC or TCEQ, as appropriate, rather than TCEQ alone, undertake an investigation of any matter within its jurisdiction;

(5) preparation of recommendations and a report for inclusion in the annual report of PUC or TCEQ, as appropriate, rather than TCEQ alone;

(6) protection and representation of the public interest before PUC or TCEQ, as appropriate, rather than protection and representation of the public interest, together with the public interest advocate, before TCEQ; and

(7) other activities that are reasonably necessary to enable PUC and the executive director and the staff of PUC or TCEQ, as appropriate, to perform their duties, rather than other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.

SECTION 11. Amends Section 13.014, Water Code, as follows:

Sec. 13.014. New heading: ATTORNEY GENERAL TO REPRESENT COMMISSION OR UTILITY COMMISSION. Requires the attorney general to represent TCEQ or PUC, rather than TCEQ alone, under this chapter in all matters before the state courts and any court of the United States.

SECTION 12. Amends Subchapter B, Chapter 13, Water Code, by adding Section 13.017, as follows:

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

(b) Provides that the independent Office of Public Utility Counsel (OPUC) represents the interests of residential and small commercial consumers under this chapter. Provides that OPUC:

(1) is required to assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) is required to advocate in OPUC's own name a position determined by the public utility counsel (counsellor) to be most advantageous to a substantial number of residential consumers;

(3) is authorized to appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before PUC, including an alternative dispute resolution proceeding; and

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

(4) is authorized to initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

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

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

(5) is entitled to the same access as a party, other than PUC staff, to records gathered by PUC under Section 13.133 (Inspections; Examination under Oath; Compelling Production of Records; Inquiry into Management and Affairs);

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before PUC;

(7) is authorized to represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail utility services that is unresolved before PUC;

(8) is authorized to recommend legislation to the legislature that OPUC determines would positively affect the interests of residential and small commercial consumers; and

(9) is authorized to conduct consumer outreach and education programs for residential and small commercial consumers.

(c) Provides that this section does not affect a duty OPUC is required to perform under other law or limit the authority of PUC to represent residential or small commercial consumers.

(d) Provides that the appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. Prohibits the counsellor from being grouped with any other party.

SECTION 13. Amends Section 13.041, Water Code, as follows:

Sec. 13.041. New heading: GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION; RULES; HEARINGS. (a) Authorizes PUC, rather than TCEQ, to regulate and supervise the business of each, rather than every, water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. Authorizes TCEQ to regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. Authorizes PUC and TCEQ, rather than TCEQ alone, to do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers and jurisdiction. Authorizes PUC to consult with TCEQ as necessary in carrying out its duties related to the regulation of water and sewer utilities.

(b) Requires TCEQ and PUC, rather than TCEQ alone, to adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency, including rules governing practice and procedure before TCEQ and PUC, rather than TCEQ alone.

(c) Authorizes TCEQ and PUC, rather than TCEQ alone, to call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of TCEQ or PUC, rather than TCEQ alone.

(c-1) Authorizes PUC, in addition to the powers and duties of the State Office of Administrative Hearings (SOAH) under Title 2 (Public Utility Regulatory Act), Utilities Code, to delegate to an administrative law judge of SOAH the responsibility and authority to issue interlocutory orders related to interim rates under this chapter.

(d) Authorizes PUC, rather than TCEQ, to issue emergency orders, with or without a hearing, to compel certain actions listed in existing law.

(e) Authorizes PUC, rather than TCEQ, to establish reasonable compensation for the temporary service required under Subsection (d)(2) (relating to compelling a retail public utility to provide an emergency interconnection with a neighboring retail public utility) and to allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(f) Requires that an order, if an order is issued under Subsection (d) without a hearing, fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before PUC, rather than TCEQ.

(g) Provides that the regulatory assessment required by Section 5.701(n) (relating to a requirement of each provider of potable water to collect a regulatory assessment), rather than 5.235(n) is not a rate and is not reviewable by PUC, rather than TCEQ, under Section 13.043 (Appellate Jurisdiction). Provides that the TCEQ has the authority to enforce payment and collection of the regulatory assessment.

Makes nonsubstantive changes.

SECTION 14. Amends Section 13.042, Water Code, as follows:

Sec. 13.042. New heading: JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Provides that, the

governing body of each municipality, subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

(b) Authorizes the governing body of a municipality by ordinance to elect to have PUC, rather than TCEQ, exercise exclusive original jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

(c) Authorizes the governing body of a municipality that surrenders its jurisdiction to PUC, rather than to TCEQ, to reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to PUC, rather than to TCEQ, except that the municipality is prohibited from reinstating its jurisdiction during the pendency of a rate proceeding before PUC, rather than to TCEQ. Prohibits the municipality from surrendering its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(d) Requires PUC, rather than TCEQ, to have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.

(e) Requires PUC, rather than TCEQ, to have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

(f) Provides that this subchapter does not give PUC, rather than TCEQ, power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

SECTION 15. Amends Sections 13.043(a), (b), (c), (e), (f), (g), (h), and (j), Water Code, as follows:

(a) Authorizes any party to a rate proceeding before the governing body of a municipality to appeal the decision of the governing body to PUC, rather than TCEQ. Provides that this subsection does not apply to a municipally owned utility. Requires that an appeal under this subsection be initiated within 90 days after the date of notice of the final decision by the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with PUC, rather than TCEQ, and by serving copies on all parties to the original rate proceeding. Requires PUC, rather than TCEQ, to hear the appeal de novo and to fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and is authorized to include reasonable expenses incurred in the appeal proceedings. Authorizes PUC, rather than TCEQ, to establish the effective date for PUC's rates, rather than TCEQ's rates, at the original effective date as proposed by the utility provider and to order refunds or allow a surcharge to recover lost revenues. Authorizes PUC, rather than TCEQ, to consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Authorizes ratepayers of certain entities listed in existing law to appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to PUC, rather than TCEQ.

(c) Requires that an appeal under Subsection (b) be initiated by filing a petition for review with PUC, rather than TCEQ, and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (5),

within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. Provides that the petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b). Makes nonsubstantive changes.

(e) Requires PUC, rather than TCEQ, in an appeal under Subsection (b), to hear the appeal de novo and to fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. Authorizes PUC, rather than TCEQ, to establish the effective date for PUC's rates, rather than TCEQ's rates, at the original effective date as proposed by the service provider, to order refunds or allow a surcharge to recover lost revenues, and to allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. Authorizes PUC, rather than TCEQ, to consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. Provides that the rates established by PUC, rather than TCEQ, in an appeal under Subsection (b) remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless PUC, rather than TCEQ, determines that a financial hardship exists. Makes nonsubstantive changes.

(f) Authorizes a retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, to appeal to PUC, rather than TCEQ, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. Provides that an appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) Authorizes an applicant for service from an affected county or a water supply or sewer service corporation to appeal to PUC, rather than TCEQ, a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. Requires PUC, rather than TCEQ, in an appeal brought under this subsection, in addition to the factors specified under Subsection (j), to determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. Requires that PUC, rather than TCEQ, if it finds the amount charged to be clearly unreasonable, to establish the fee to be paid for that applicant. Requires that an appeal under this subsection be initiated within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. Provides that a determination made by PUC, rather than TCEQ, on an appeal under this subsection is binding on all similarly situated applicants for service, and prohibits PUC, rather than TCEQ, from considering other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) Authorizes PUC, rather than TCEQ, on a motion by PUC, rather than by the executive director, or by the appellant under Subsection (a), (b), or (f), to establish interim rates to be in effect until a final decision is made. Makes a nonsubstantive change.

(j) Requires PUC, rather than TCEQ, in an appeal under this section, to ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is required to be just and reasonable. Prohibits rates from being unreasonably preferential, prejudicial, or discriminatory but requires rates to be sufficient, equitable, and consistent in application to each class of customers. Requires PUC, rather than TCEQ, to use a methodology that preserves the financial integrity of the retail public utility. Requires PUC, rather than TCEQ, for agreements between municipalities to consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

SECTION 16. Amends Section 13.044(b), Water Code, as follows:

(b) Authorizes a district, notwithstanding the provisions of any resolution, ordinance, or agreement, to appeal the rates imposed by the municipality by filing a petition with PUC, rather than TCEQ. Requires PUC, rather than TCEQ, to hear the appeal de novo and requires the municipality to have the burden of proof to establish that the rates are just and reasonable. Requires PUC, rather than TCEQ, to fix the rates to be charged by the municipality and prohibits the municipality from increasing such rates without the approval of PUC, rather than TCEQ.

SECTION 17. Amends Section 13.046, Water Code, as follows:

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) Requires PUC, rather than TCEQ, by rule to establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

(b) Authorizes the rules to provide a streamlined process that the retail public utility that takes over the nonfunctioning system is authorized to use to apply to PUC, rather than TCEQ, for a ruling on the reasonableness of the rates the utility is charging under Subsection (a). Requires that the process allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with PUC and TCEQ rules, rather than TCEQ rules alone.

(c) Requires PUC to provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with PUC and TCEQ rules, rather than TCEQ rules alone, during which PUC or TCEQ, rather than TCEQ rules alone, is prohibited from imposing a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. Requires PUC, rather than TCEQ, to consult with the utility before determining the period and authorizes PUC, rather than TCEQ, to grant an extension of the period for good cause.

SECTION 18. Amends Section 13.081, Water Code, to prohibit this chapter from being construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement is authorized to limit or interfere with any power conferred on PUC, rather than TCEQ, by this chapter. Authorizes a municipality, if it performs regulatory functions under this chapter, to make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

SECTION 19. Amends Section 13.082, Water Code, as follows:

Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT AREAS. (a) Requires municipalities, notwithstanding any other provision of this section, to continue to regulate each kind of local utility service inside their boundaries until PUC, rather than TCEQ, has assumed jurisdiction over the respective utility pursuant to this chapter.

(b) Requires that local utility service within the boundaries of the municipality, if a municipality does not surrender its jurisdiction, be exempt from regulation by PUC, rather than TCEQ, under this chapter to the extent that this chapter applies to local service, and requires the municipality, regarding service within its boundaries, to have the right to exercise the same regulatory powers under the same standards and rules as PUC, rather than TCEQ, or other standards and rules not inconsistent with them. Provides that PUC's rules, rather than TCEQ's rules, relating to service and response to requests for service for utilities operating

within a municipality's corporate limits apply unless the municipality adopts its own rules.

(c) Authorizes PUC, rather than TCEQ, notwithstanding any election, to consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and to also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Authorizes the governing body, if fixing rates and charges in the exempt area, to consider better and sewer utilities' revenues and return on investment in nonexempt areas.

(d) Provides that utilities serving exempt areas are subject to the reporting requirements of this chapter. Requires that those reports and tariffs be filed with the governing body of the municipality as well as with PUC, rather than TCEQ.

(e) Provides that this section does not limit the duty and power of PUC, rather than TCEQ, to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 20. Amends Section 13.085, Water Code, as follows:

Sec. 13.085. New heading: ASSISTANCE BY UTILITY COMMISSION. Authorizes PUC, rather than TCEQ, on request, to advise and assist municipalities and affected counties in connection with questions and proceedings arising under this chapter. Authorizes this assistance to include aid to municipalities or an affected county in connection with matters pending before PUC, rather than TCEQ, 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 21. Amends Section 13.087(c), Water Code, to provide that, notwithstanding any other provision of this chapter, PUC, rather than TCEQ, has jurisdiction to enforce this section.

SECTION 22. Amends Sections 13.131(a), (b), (c), and (e), Water Code, as follows:

(a) Requires every water and sewer utility to keep and render to the regulatory authority in the manner and form prescribed by PUC, rather than TCEQ, uniform accounts of all business transacted. Authorizes PUC, rather than TCEQ, to 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 PUC, rather than TCEQ, may be necessary to carry out this chapter.

(b) Authorizes compliance with the system of accounts prescribed for the particular class of utilities by a federal regulatory agency, in the case of a utility subject to regulation by that agency, to be considered a sufficient compliance with the system prescribed by PUC, rather than TCEQ. Authorizes PUC, rather than TCEQ, however, to prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. Prohibits the system of accounts and the forms of books, accounts, records, and memoranda prescribed by PUC, rather than TCEQ, for a utility or class of utilities from conflicting or being inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) Requires PUC, rather than TCEQ, to fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and to require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules PUC, rather than TCEQ, prescribes. Provides that rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the accumulated depreciation amount in a manner consistent with accounting treatment of regulated electric and gas utilities in this state. Provides that those rates, methods, and

accounts must be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(e) Provides that every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by PUC, rather than TCEQ, and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. Authorizes the regulatory authority to require the examination and audit of all accounts.

SECTION 23. Amends Section 13.132, Water Code, as follows:

Sec. 13.132. New heading: POWERS OF UTILITY COMMISSION. (a) Authorizes PUC, rather than TCEQ, among other authority listed in existing law, to require that water and sewer utilities report to PUC any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter, including any information relating to a transaction between the utility and an affiliated interest inside or outside this state, to the extent that the transaction is subject to PUC's jurisdiction.

(b) Authorizes PUC, rather than TCEQ, on the request of the governing body of any municipality, to provide sufficient staff members to advise and consult with the municipality on any pending matter.

SECTION 24. Amends Section 13.1325, Water Code, as follows:

Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. Requires PUC, on request, to provide, at a reasonable cost, electronic copies of or Internet access to all information provided to PUC under Sections 13.016 (Record of Proceedings; Right to Hearing) and 13.043 and Subchapter F (Proceedings before Regulatory Authority) to the extent that the information is available and is not confidential, rather than requiring the state agency with jurisdiction over rates charged by water and sewer utilities to provide, at a reasonable cost, electronic copies of all information provided to the agency under Sections 13.016, 13.043, and 13.187 (Statement of Intent to Change Rates; Hearing; Determination of Rate Level) to the extent that the information is available and is not confidential. Requires that copies of all information provided to PUC, rather than the agency, be provided to OPUC, on request, at no cost to OPUC. Makes conforming changes.

SECTION 25. Amends Section 13.133(b), Water Code, to authorize the regulatory authority to require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority so orders, rather than if TCEQ so orders. Provides that a utility failing or refusing to comply with such an order or subpoena violates this chapter.

SECTION 26. Amends Section 13.136, Water Code, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(b) Requires PUC by rule to require each utility to annually file a service, financial, and normalized earnings report in a form and at times specified by PUC rule, rather than requiring that each utility annually file a service and financial report in a form and at times specified by TCEQ rule. Requires that the report include information sufficient to enable PUC to properly monitor utilities in this state. Requires PUC to make available to the public information in the report PUC does not file as confidential.

(b-1) Requires PUC to provide copies of a report described by Subsection (b) that include information filed as confidential to OPUC on request, at no cost to OPUC.

(c) Requires every water supply or sewer service corporation to file with PUC, rather than TCEQ, tariffs showing all rates that are subject to the appellate jurisdiction of PUC, rather than TCEQ, and that are in force at the time for any utility service, product, or commodity offered. Requires every water supply or sewer service corporation to file

with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished. Provides that the filing required under this subsection be for informational purposes only.

SECTION 27. Amends Section 13.137, Water Code, as follows:

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

(1) Makes available and notify its customers of a business location where its customers may make payments to prevent disconnection of or to restore service under certain criteria listed in existing law; 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 is required to keep all books, accounts, records, and memoranda required by PUC, rather than TCEQ, to be kept in this state.

(b) Authorizes PUC, rather than TCEQ, by rule to 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. Requires that 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) Prohibits books, accounts, records, or memoranda required by the regulatory authority to be kept in the state from being removed from the state, except on conditions prescribed by PUC, rather than TCEQ.

SECTION 28. Amends Sections 13.1396(b), (c), and (f), Water Code, as follows:

(b) Requires an affected utility to submit to the office of emergency management of each county in which the utility has more than one customer, the PUC, and the office of emergency management of the governor a copy of the affected utility's emergency preparedness plan approved under Section 13.1395, and the commission's notification to the affected utility that the plan is accepted.

(c) Requires that each affected utility submit to the PUC, in addition to certain entities listed in existing law, certain information listed in existing law. Makes a nonsubstantive change.

(f) Requires each electric utility and each retail electric provider, not later than May 1 of each year, to determine whether the facilities of the affected utility qualify for critical load status under rules adopted by the PUC.

SECTION 29. Amends Section 13.142(b), Water Code, to require PUC, rather than TCEQ, to adopt rules concerning payment of utility bills that are consistent with Chapter 2251 (Payment for Goods and Services), Government Code.

SECTION 30. Amends Section 13.144, Water Code, to require a district or authority created under Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III (Legislative Department), or Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply to provide PUC, rather than TCEQ, with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. Requires that the submission include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

SECTION 31. Amends Section 13.147(a), Water Code, to authorize a retail public utility providing water service to contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. Authorizes the water service provider to provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. Authorizes the sewer service provider, if the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, to petition the PUC, rather than TCEQ, to issue an order requiring the water service provider to provide that service.

SECTION 32. Amends Section 13.181(b), Water Code, as follows:

(b) Provides that PUC, rather than TCEQ, subject to this chapter, has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. Authorizes the regulatory authority for this purpose to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. Prohibits a rule or order of the regulatory authority from conflicting with the rulings of any federal regulatory body. Authorizes PUC, rather than TCEQ, to adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 33. Amends Sections 13.182(c) and (d), Water Code, as follows:

(c) Authorizes PUC, rather than TCEQ, for ratemaking purposes, to treat two or more municipalities served by a utility as a single class wherever PUC, rather than TCEQ, considers that treatment to be appropriate.

(d) Requires PUC, rather than TCEQ, by rule to establish a preference that rates under a consolidated tariff be consolidated by region. Requires that the regions under consolidated tariffs be determined on a case-by-case basis.

SECTION 34. Amends Section 13.183(d), Water Code, to prohibit a regulatory authority other than PUC, rather than TCEQ, from approving an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

SECTION 35. Amends Section 13.184(a), Water Code, as follows:

(a) Prohibits PUC, rather than TCEQ, unless PUC, rather than TCEQ, establishes alternate rate methodologies in accordance with Section 13.183(c) (relating to authority granted to the regulatory authority to adopt certain ratemaking methodologies), from prescribing any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. Authorizes the governing body of a municipality exercising its original jurisdiction over rates and services to use alternate ratemaking methodologies established by ordinance or by PUC rule, rather than TCEQ rule, in accordance with Section 13.183(c). Prohibits a municipal regulatory authority, unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by PUC rule, rather than TCEQ rule, in accordance with Section 13.183(c), from prescribing any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 36. Amends Sections 13.185(d) and (h), Water Code, as follows:

(d) Provides that the net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. Requires the regulatory authority to base a utility's expenses on historic test year information adjusted for known and measurable changes, as determined by PUC rules and to determine expenses and

revenues in a manner consistent with Subsections (e) (relating to prohibiting certain payments from being allowed as capital cost or as expense), (f) (relating to income taxes of certain utilities), (g) (authorizing the regulatory authority to promulgate certain reasonable rules and regulations), and (h) of this section. Makes nonsubstantive changes.

(h) Prohibits the regulatory authority from including for ratemaking purposes:

- (1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;
- (2) costs of processing a refund or credit under this subchapter, rather than under Section 13.187 of this chapter; or
- (3) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including executive salaries, advertising expenses, legal expenses, and civil penalties or fines.

SECTION 37. Amends Section 13.187, Water Code, as follows:

Sec. 13.187. New heading: CLASS A UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Provides that this section applies only to a Class A utility.

(a-1) Creates this subsection from existing text. Prohibits a utility from making changes in its rates except by sending by mail or e-mail, rather than delivering, a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35, rather than 60, days before the effective date of the proposed change. Authorizes the utility to send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. Requires that the effective date of the new rates be the first day of a billing period, and prohibits the new rates from applying to service received before the effective date of the new rates. Requires that the statement of intent include a description of the process by which a ratepayer may intervene in the ratemaking proceeding, in addition to certain criteria for information and comparisons listed in existing law. Makes nonsubstantive changes.

(b) Requires the utility to mail, send by e-mail, or deliver a copy of the statement of intent to OPUC, appropriate offices of each affected municipality, and any other affected persons as required by the regulatory authority's rules, rather than requiring that a copy of the statement of intent be mailed, sent by e-mail, or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules. Makes nonsubstantive changes.

(c) Requires the utility to file with the regulatory authority an application to change rates when the statement of intent is delivered. Requires that the application include information the regulatory authority requires by rule and any appropriate cost and rate schedules and written testimony supporting the requested rate increase. Authorizes the regulatory authority to disallow the nonsupported costs or expenses if the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application.

(d) Authorizes the application or the statement of intent if it is not substantially complete or does not comply with the regulatory authority's rules, except as provided by Subsections (d-1) and (e), to be rejected and the effective date of the rate change is authorized to be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. Authorizes PUC, rather than TCEQ, to also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before PUC, rather than TCEQ, or if the utility is delinquent in paying

the assessment and any applicable penalties or interest required by Section 5.701(n). Makes nonsubstantive changes.

(d-1) Authorizes a local regulatory authority, after written notice to the utility, to suspend the effective date of a rate change for not more than 90 days from the proposed effective date. Requires that the proposed rate, if the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, rather than the applicable suspension period, be considered approved. Provides that this approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress, rather than the approval is subject to the local regulatory authority's continuation of a hearing in progress. Makes nonsubstantive changes.

Strikes a provision providing an exception to a local regulatory authority's ability to suspend the effective date of a rate change, stating that the suspension shall be extended by two days for each day a hearing exceeds 15 days.

(e) Authorizes PUC, after written notice to the utility, to suspend the effective date of a rate change for not more than 150 days from the proposed effective date. Requires that the proposed rate be considered approved if PUC does not make a final determination on the proposed rate before the expiration of the suspension period. Provides that this approval is subject to the authority of PUC thereafter to continue a hearing in progress.

Strikes a provision requiring the regulatory authority to set the matter for hearing if, before the 91st day after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction.

(e-1) Requires that the 150-day period described by Subsection (e) be extended by two days for each day a hearing exceeds 15 days.

(f) Requires the regulatory authority to, not later than the 30th day after the effective date of the change, begin a hearing to determine the propriety of the change, rather than authorizing the regulatory authority to set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change. Authorizes PUC, if the regulatory authority is PUC, to refer the matter to SOAH as provided by PUC rules.

Strikes a provision requiring that the hearing be held at a location in that county if more than half of the ratepayers of the utility receive service in a county with a population of more than 3.3 million.

(g) Authorizes a local regulatory authority hearing described by this section to be informal.

(g-1) Requires PUC, if the regulatory authority is PUC, to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. Provides that the utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and provides that the absence of an answer does not affect an order for a hearing.

(h) Requires the regulatory authority to determine the rates to be charged by the utility and to fix the rates by order served on the utility if, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law.

(i) Authorizes a utility to put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which PUC is exercising appellate or original jurisdiction, by filing a bond with PUC if the suspension period has been extended under Subsection (e-1) and PUC fails to

make a final determination before the 151st day after the date the rate change would otherwise be effective.

(j) Prohibits the bonded rate from exceeding the proposed rate. Requires that the bond be payable to PUC in an amount, in a form, and with a surety approved by PUC and conditioned on refund.

Strikes a provision authorizing the regulatory authority, pending final action in a rate proceeding, to order the utility to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the regulatory authority.

(k) Requires the utility, unless otherwise agreed to by the parties to the rate proceeding, to refund or credit against future bills all sums collected under the bonded rates in excess of the rate finally ordered and interest on those sums at the current interest rate as determined by the regulatory authority, rather than all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest as determined by the regulatory authority. Makes nonsubstantive changes.

(l) Authorizes the regulatory authority, at any time during the pendency of the rate proceeding to fix interim rates to remain in effect during the applicable suspension period under Subsection (d-1) or Subsections (e) and (e-1) or until a final determination is made on the proposed rate. Provides that if the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (c) was filed continue in effect during the suspension period.

(m) Requires that the utility be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding, if the regulatory authority sets a final rate that is higher than the interim rate.

(n) Authorizes the regulatory authority at any time during the proceeding to require the utility, for good cause shown, to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(o) Requires the regulatory authority, if a regulatory authority other than PUC, rather than TCEQ, establishes interim rates or bonded rates, rather than an escrow account, to make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded rates, rather than escrowed rates, or the rates are automatically approved as requested by the utility.

(p) Prohibits a utility or two or more utilities under common control and ownership from filing a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists, except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system. Provides that the utility is not considered to be in violation of the 12-month filing requirement if the regulatory authority requires the utility to deliver a corrected statement of intent.

Deletes text of existing Subsection (j), authorizing the regulatory authority, for good cause shown, to authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.

Deletes existing text of existing Subsection (k), authorizing the regulatory authority to, pending the hearing and a decision, suspend the date the rate change would otherwise be effective if the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set

a hearing under Subsection (e) and setting limits for the suspension of the rate change.

SECTION 38. Amends Subchapter F, Chapter 13, Water Code, by adding Sections 13.1871 and 13.1872, as follows:

Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Provides that, except as provided by Section 13.1872, this section applies only to a Class B utility.

(b) Prohibits a utility from making changes in its rates except by sending by mail or e-mail a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. Authorizes the utility to send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. Requires that the effective date of the new rates be the first day of a billing period, and prohibits the new rates from applying to service received before the effective date of the new rates. Requires that the statement of intent include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of 10,000 gallons of water and 30,000 gallons of water;

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; and

(4) a description of the process by which a ratepayer is authorized to file a complaint under Subsection (i).

(c) Requires the utility to mail, send by e-mail, or deliver a copy of the statement of intent to the appropriate offices of each affected municipality and to any other affected persons as required by the regulatory authority's rules.

(d) Requires the utility, when the statement of intent is delivered, to file with the regulatory authority an application to change rates. Requires that the application include information the regulatory authority requires by rule and any appropriate cost and rate schedules supporting the requested rate increase. Requires 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. Authorizes the regulatory authority, if the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, to disallow the nonsupported costs or expenses.

(e) Authorizes the application or the statement of intent to be rejected and the effective date of the rate change to be suspended, except as provided by Subsection (f) or (g), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. Authorizes PUC to also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before PUC or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n).

(f) Authorizes a local regulatory authority, after written notice to the utility, to suspend the effective date of a rate change for not more than 90 days from the

proposed effective date. Requires that the proposed rate be considered approved if the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period. Provides that this approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(g) Authorizes PUC, after written notice to the utility, to suspend the effective date of a rate change for not more than 205 days from the proposed effective date. Requires that the proposed rate be considered approved if PUC does not make a final determination on the proposed rate before the expiration of the suspension period. Provides that this approval is subject to the authority of PUC thereafter to continue a hearing in progress.

(h) Requires that the 205-day period described by Subsection (g) be extended by two days for each day a hearing exceeds 15 days.

(i) Requires the regulatory authority to set the matter for hearing if, before the 91st day after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction.

(j) Authorizes the regulatory authority to, pending the hearing and a decision, suspend the date the rate change would otherwise be effective, if the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (i). Prohibits the proposed rate, except as provided by Subsection (h), from being suspended for longer than 90 days by a local regulatory authority or 205 days by PUC.

(k) Authorizes the regulatory authority to set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(l) Authorizes the hearing to be informal.

(m) Requires the regulatory authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. Provides that the utility is not required to provide a formal answer or file any other formal pleading in response to the notice and that the absence of an answer does not affect an order for a hearing.

(n) Requires the utility to mail notice of the hearing to each ratepayer before the hearing. Requires that the notice include a description of the process by which a ratepayer is authorized to intervene in the ratemaking proceeding.

(o) Requires the regulatory authority to determine the rates to be charged by the utility and to fix the rates by order served on the utility, if, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law.

(p) Authorizes a utility to put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which PUC is exercising appellate or original jurisdiction, by filing a bond with PUC if the suspension period has been extended under Subsection (h) and PUC fails to make a final determination before the 206th day after the date the rate change would otherwise be effective.

(q) Prohibits the bonded rate from exceeding the proposed rate. Requires that the bond be payable to PUC in an amount, in a form, and with a surety approved by PUC and conditioned on refund.

(r) Requires the utility, unless otherwise agreed to by the parties to the rate proceeding, to refund or credit against future bills all sums collected under the

bonded rates in excess of the rate finally ordered and interest on those sums at the current interest rate as determined by the regulatory authority.

(s) Authorizes the regulatory authority at any time during the pendency of the rate proceeding to fix interim rates to remain in effect during the applicable suspension period under Subsection (f) or Subsections (g) and (h) or until a final determination is made on the proposed rate. Provides that the rates in effect when the application described by Subsection (e) was filed continue in effect during the suspension period if the regulatory authority does not establish interim rates.

(t) Requires the utility, if the regulatory authority sets a final rate that is higher than the interim rate, to be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(u) Authorizes the regulatory authority, for good cause shown, at any time during the proceeding to require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(v) Requires the regulatory authority, if a regulatory authority other than PUC establishes interim rates or bonded rates, to make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded rates or the rates are automatically approved as requested by the utility.

(w) Prohibits a utility or two or more utilities under common control and ownership, except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, from filing a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. Provides that the utility is not considered to be in violation of the 12-month filing requirement if the regulatory authority requires the utility to deliver a corrected statement of intent.

Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT. (a) Provides that this section applies only to a Class C utility.

(b) Defines "price index" in this section to mean an appropriate price index designated annually by PUC for the purposes of this section.

(c) Prohibits a utility from making changes in its rates except by:

(1) filing an application for a rate adjustment under the procedures described by Subsection (e) and sending by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, a notice to each ratepayer describing the proposed rate adjustment at least 30 days before the effective date of the proposed change; or

(2) complying with the procedures to change rates described by Section 13.1871.

(d) Requires the utility to mail, send by e-mail, or deliver a copy of the application to the appropriate offices of each affected municipality and to any other affected persons as required by the regulatory authority's rules.

(e) Requires PUC by rule to adopt procedures to allow a utility to receive without a hearing an annual rate adjustment based on changes in the price index. Requires that the rules:

(1) include standard language to be included in the notice described by Subsection (c)(1) describing the rate adjustment process; and

(2) 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 the lesser of:

(A) five percent; or

(B) 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.

(f) Authorizes a utility to adjust the utility's rates using the procedures adopted under Subsection (e) not more than once each year and not more than four times between rate proceedings described by Section 13.1871.

SECTION 39. Amends Sections 13.188, Water Code, as follows:

Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a) Requires PUC, rather than TCEQ, notwithstanding any other provision in this chapter, by rule to adopt a procedure allowing a utility to file with PUC, rather than TCEQ, an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause. Requires PUC, rather than TCEQ, by rule, to require the pass through of documented decreases in energy costs within a reasonable time. Requires that the pass through, whether a decrease or increase, be implemented on no later than an annual basis, unless PUC, rather than TCEQ, determines a special circumstance applies.

(b) Provides that, notwithstanding any other provision to the contrary, this adjustment is an uncontested matter not subject to a contested case hearing. Requires PUC, rather than the executive director, to hold an uncontested public meeting on the request of a member of the legislature who represents the area served by the water and sewer utility, or if PUC, rather than the executive director, determines that there is substantial public interest in the matter.

(c) Provides that a proceeding under this section is not a rate case and Sections 13.187, 13.1871, and 13.1872 do not apply, rather than Section 13.187 does not apply.

SECTION 40. Amends Sections 13.241(a), (d), and (e), Water Code, as follows:

(a) Requires PUC, rather than TCEQ, in determining whether to grant or amend a certificate of public convenience and necessity, to ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(d) Requires the applicant, to demonstrate to PUC that regionalization or consolidation with another retail public utility is not economically feasible, before PUC, rather than TCEQ, grants a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system.

(e) Requires PUC, rather than TCEQ, by rule to develop a standardized method for determining under Section 13.246(f) which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area is more capable financially, managerially, and technically of providing continuous and adequate service. Provides that in this subsection, "economically distressed area" has the meaning assigned by Section 15.001.

SECTION 41. Amends Sections 13.242(a) and (c), Water Code, as follows:

(a) Prohibits a utility, a utility operated by an affected county, or a water supply or sewer service corporation, unless otherwise specified, from in any way rendering retail water or sewer utility service directly or indirectly to the public without first having obtained from PUC, rather than TCEQ, a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise

provided by this subchapter, prohibits a retail public utility from furnishing, making available, rendering, or extending retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(c) Authorizes PUC, rather than TCEQ, by rule to allow a municipality or utility or water supply corporation to render retail water service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 that it intends to provide retail water service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility. Makes a nonsubstantive change.

SECTION 42. Amends Section 13.244, Water Code, as follows:

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) Requires a public utility or water supply or sewer service corporation, to submit to PUC, rather than TCEQ, an application for a certificate or for an amendment as provided by this section, in order to obtain a certificate of public convenience and necessity or an amendment to a certificate.

(b) Requires each public utility and water supply or sewer service corporation to file with PUC, rather than TCEQ, a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and requires each certificated retail public utility to file with PUC, rather than TCEQ, a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

(c) Requires each applicant for a certificate or for an amendment to file with PUC, rather than TCEQ, evidence required by PUC, rather than TCEQ, to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) Requires that an application for a certificate of public convenience and necessity or for an amendment to a certificate contain certain criteria listed in existing law and any other item required by PUC, rather than TCEQ.

SECTION 43. Amends Sections 13.245(b), (c), (c-1), (c-2), (c-3), and (e), Water Code, as follows:

(b) Prohibits PUC, rather than TCEQ, except as provided by Subsections (c), (c-1), and (c-2), from granting 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. Prohibits the municipality from unreasonably withholding the consent. Authorizes the municipality, as a condition of the consent, to require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c) Requires PUC, rather than TCEQ, 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, to grant the certificate of public convenience and necessity without the consent of the municipality if PUC, rather than TCEQ, finds that the municipality does not have the ability to provide service, or has failed to make a good faith effort to provide service on reasonable terms and conditions.

(c-1) Authorizes PUC, rather than TCEQ, 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 and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to PUC, rather than TCEQ, including a capital improvements plan required by Section 13.244(d)(3) (relating to a requirement of an application for a certain certificate or an amendment to a certificate) or

a subdivision plat, to grant the certificate of public convenience and necessity without the consent of the municipality if:

(1) PUC, rather than TCEQ, makes the findings required by Subsection (c);

(2) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to PUC, rather than TCEQ, before the 180th day after the date the formal request was made; and

(3) the landowner or retail public utility that submitted the formal request has not unreasonably refused to comply with the municipality's service extension and development process, or enter into a contract for water or sewer services with the municipality.

(c-2) Provides that PUC, rather than TCEQ, if a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, is not required to make the findings otherwise required by this section and is authorized to grant the certificate of public convenience and necessity to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(c-3) Requires PUC, rather than TCEQ, to include as a condition of a certificate of public convenience and necessity granted under Subsection (c-1) or (c-2) that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(e) Authorizes the municipality or the retail public utility, if PUC, rather than TCEQ, makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, to appeal the decision to the appropriate state district court. Requires the court to hear the petition within 120 days after the date the petition is filed. Authorizes the court on final disposition to award reasonable fees to the prevailing party.

SECTION 44. Amends Sections 13.2451(b) and (c), Water Code, as follows:

(b) Prohibits PUC, rather than TCEQ, from extending a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). Provides that this subsection does not apply to a transfer of a certificate as approved by PUC, rather than by TCEQ.

(c) Authorizes PUC, rather than TCEQ, after notice to the municipality and an opportunity for a hearing, to decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. Provides that this subsection does not apply to a certificate of public convenience and necessity for an area:

(1) that was transferred to a municipality on approval of PUC, rather than TCEQ; and

(2) in relation to which the municipality has spent public funds.

SECTION 45. Amends Section 13.246, Water Code, as follows:

Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL; FACTORS CONSIDERED. (a) Requires PUC, rather than TCEQ, if an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, to cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. Requires PUC, rather than TCEQ, if requested, to fix a time and place for a

hearing and give notice of the hearing. Authorizes any person affected by the application to intervene at the hearing.

(a-1) Requires PUC, rather than TCEQ, except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), to require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Requires that notice required under this subsection be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time PUC, rather than TCEQ, received the application for the certificate or amendment. Requires that good faith efforts to comply with the requirements of this subsection be considered adequate notice to landowners. Provides that notice under this subsection is not required for a matter filed with PUC or TCEQ, rather than TCEQ alone, under Section 13.248 or 13.255 or Chapter 65.

(b) Authorizes PUC, rather than TCEQ, to grant applications and issue certificates and amendments to certificates only if PUC, rather than TCEQ, finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. Authorizes PUC, rather than TCEQ, to issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and is authorized to impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Requires that certificates of public convenience and necessity and amendments to certificates be granted by PUC on a nondiscriminatory basis after consideration by PUC, rather than TCEQ, of certain criteria listed in existing law.

(d) Authorizes PUC, rather than TCEQ, to require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by PUC, rather than TCEQ, to ensure that continuous and adequate utility service is provided.

(e) Requires PUC, rather than TCEQ, where applicable, in addition to the other factors in this section, to consider the efforts of the applicant:

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

(2) to enforce the rules adopted under Section 16.343 (Minimum State Standards and Model Political Subdivision Rules).

(f) Requires PUC, rather than TCEQ, if two or more retail public utilities or water supply or sewer service corporations apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area and otherwise meet the requirements for obtaining a new certificate, to grant the certificate to the retail public utility or water supply or sewer service corporation that is more capable financially, managerially, and technically of providing continuous and adequate service.

(g) Provides that, in this section, “economically distressed area” has the meaning assigned by Section 15.001.

(h) Authorizes a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area, except as provided by Subsection (i), to elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to PUC, rather than TCEQ, before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity.

Provides that the landowner's election is effective without a further hearing or other process by PUC, rather than TCEQ. Requires that the application be modified so that the electing landowner's property is not included in the proposed service area if a landowner makes an election under this subsection. Prohibits an applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection from being required to provide service to the removed land for any reason, including the violation of law or PUC or TCEQ rules, rather than TCEQ rules alone, by the water or sewer system of another person.

(i) Provides that a landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by PUC, rather than TCEQ, regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

SECTION 46. Amends Section 13.247(a), Water Code, to authorize all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area, if an area is within the boundaries of a municipality, to continue and extend service in its area of public convenience and necessity within the area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under Subsection (d). Prohibits a municipally owned or operated utility, except as provided by Section 13.255, from providing retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from PUC, rather than from TCEQ, a certificate of public convenience and necessity that includes the areas to be served.

SECTION 47. Amends Section 13.248, Water Code, to provide that contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by PUC, rather than TCEQ, after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 48. Amends Sections 13.250(b), (c), and (e), Water Code, as follows:

(b) Prohibits the holder of a certificate or a person who possesses facilities used to provide utility service, unless PUC, rather than TCEQ, issues a certificate that neither the present nor future convenience and necessity will be adversely affected, from discontinuing, reducing, or impairing service to a certified service area or part of a certified service area except for:

- (1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;
- (2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a PUC-ordered arrangement, rather than a TCEQ-ordered arrangement, between the two service providers;
- (3) nonuse; or
- (4) other similar reasons in the usual course of business.

(c) Requires any discontinuance, reduction, or impairment of service, whether with or without approval of PUC, rather than TCEQ, to be in conformity with and subject to conditions, restrictions, and limitations that PUC, rather than TCEQ, prescribes.

(e) Requires the utility, not later than the 48th hour after the hour in which a utility files a bankruptcy petition, to report this fact to PUC and TCEQ, rather than TCEQ alone, in writing.

SECTION 49. Amends Section 13.2502(d), Water Code, to provide that this section does not limit or extend the jurisdiction of PUC, rather than TCEQ, under Section 13.043(g).

SECTION 50. Amends Section 13.251, Water Code, as follows:

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. Prohibits a utility or a water supply or sewer service corporation, except as provided by Section 13.255, from selling, assigning, or leasing a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c). Requires that the sale, assignment, or lease be on the conditions prescribed by PUC, rather than TCEQ. Makes nonsubstantive changes.

SECTION 51. Amends Section 13.252, Water Code, as follows:

Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. Authorizes PUC, rather than TCEQ, to issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service, if a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity.

SECTION 52. Amends Section 13.253, Water Code, as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) Authorizes PUC or TCEQ, rather than TCEQ, after notice and hearing, to:

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

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

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to PUC, rather than TCEQ, to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by PUC, rather than TCEQ; or

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

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service

sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

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

(b) Authorizes PUC, rather than TCEQ, if it, has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355 (Financial Assurance for Certain Systems), Health and Safety Code, or under this chapter, the PUC, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a meeting of PUC, rather than at a TCEQ meeting, to immediately order specified improvements and repairs to the water or sewer system, the costs of which are authorized to be paid by the bond or other financial assurance in an amount determined by PUC, rather than TCEQ, not to exceed the amount of the bond or financial assurance. Authorizes the order requiring the improvements to be an emergency order if it is issued after the retail public utility has had an opportunity to be heard at a meeting of PUC, rather than by the commissioners at a TCEQ meeting. Authorizes PUC, rather than TCEQ, after notice and hearing, to require a retail public utility to obligate additional money to replace the financial assurance used for the improvements. Makes conforming changes.

SECTION 53. Amends Sections 13.254(a), (a-1), (a-2), (a-3), (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Water Code, as follows:

(a) Authorizes PUC, rather than TCEQ, at any time after notice and hearing to revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if PUC, rather than TCEQ, makes certain findings listed in existing law.

(a-1) Authorizes the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service, as an alternative to decertification under Subsection (a), to petition PUC, rather than TCEQ, under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area is authorized to receive service from another retail public utility. Provides that the fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of service from an alternative provider. Requires the petitioner, on the day the petitioner submits the petition to PUC, rather than TCEQ, to send, via certified mail, a copy of the petition to the certificate holder, who is authorized to submit information to PUC, rather than to TCEQ, to controvert information submitted by the petitioner. Requires the petitioner to demonstrate that:

(1) A written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying the area for which service is sought; the timeframe within which service is needed for current and projected service demands in the area; the level and manner of service needed for current and projected service demands in the area; the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder; the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

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

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by PUC, rather than TCEQ; and

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

(a-2) Provides that a landowner is not entitled to make the election described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by PUC, rather than TCEQ, if the landowner's property is located in a certain area as defined in existing law.

(a-3) Requires PUC, rather than TCEQ, within 60 calendar days from the date PUC, rather than TCEQ, determines the petition filed pursuant to Subsection (a-1) to be administratively complete, to grant the petition unless the PUC, rather than TCEQ, makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. Authorizes PUC, rather than TCEQ, to grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. Authorizes PUC, rather than TCEQ, in addition, to require an award of compensation as otherwise provided by this section.

(a-4) Provides that Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). Provides that the decision of PUC, rather than TCEQ, on the petition is final after any reconsideration authorized by PUC's rules, rather than TCEQ's rules, and is prohibited from being appealed.

(a-6) Requires PUC, rather than TCEQ, to grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. Prohibits PUC, rather than TCEQ, from denying a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. Authorizes PUC, rather than TCEQ, to require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

(a-8) Provides that PUC, rather than TCEQ, if a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(b) Authorizes PUC, rather than the executive director, upon written request from the certificate holder, to cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) Authorizes PUC, rather than TCEQ, if the certificate of any retail public utility is revoked or amended, to require one or more retail public utilities with their consent to provide service in the area in question. Prohibits the order of PUC, rather than TCEQ, from being effective to transfer property.

(d) Prohibits a retail public utility from in any way rendering retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that PUC, rather than TCEQ, determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) Requires that the determination of the monetary amount of compensation, if any, by determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. Requires PUC, rather than TCEQ, to ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies PUC, rather than TCEQ, of its intent to provide service to the decertified area.

(f) Requires that the monetary amount be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. Requires that the determination of compensation by the independent appraiser be binding on PUC, rather than TCEQ. Requires that the costs of independent appraiser be borne by the retail public utility seeking to serve the area.

(g) Requires that, for the purposes of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and requires the value of personal property be determined according to the factors in this subsection. Requires the factors ensuring that the compensation to a retail public utility is just and adequate to include certain factors included in existing law. Requires PUC, rather than TCEQ, to adopt rules governing the evaluation of the factors listed in existing law ensuring that the compensation to a retail public utility is just and adequate.

(g-1) Requires each retail public utility, if the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies PUC, rather than TCEQ, of its intent to provide service to the decertified area, to engage its own appraiser at its own expense, and each appraisal is required to be submitted to PUC, rather than TCEQ, within 60 calendar days. Requires PUC, rather than TCEQ, after receiving the appraisals, to appoint a third appraiser who is required to make a determination of the compensation within 30 days. Prohibits the determination from being less than the lower appraisal or more than the higher appraisal. Requires each retail public utility to pay half the cost of the third appraisal.

(h) Prohibits a certificate holder that has land removed from its certificated service area in accordance with this section from being required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or PUC or TCEQ rules, rather than TCEQ rules alone, by a water or sewer system of another person.

SECTION 54. Amends Sections 13.255(a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Water Code, as follows:

(a) Authorizes the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity, in the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, to agree in writing that all or part of the area may be served by a municipality owned utility, by a franchised utility, or by the retail public utility. Requires, in this section, that the phrase “franchised utility” mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. Authorizes the agreement to provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and

for such other or additional terms that the parties may agree on. Requires that the franchised utility, if a franchised utility is to serve the area, to also be a party to the agreement. Requires that the executed agreement be filed with PUC, rather than TCEQ, and requires PUC, rather than TCEQ, on receipt of the agreement, to incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) Requires the municipality, prior to providing service to the area, if an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, to file an application with PUC, rather than TCEQ, to grant single certification to the municipally owned water or sewer utility or to a franchised utility. Requires PUC, rather than TCEQ, if an application for single certification is filed, to fix a time and place for a hearing and to give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) Requires PUC, rather than TCEQ, to grant single certification to the municipality. Requires PUC, rather than TCEQ, to also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and is required to determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. Requires PUC, rather than TCEQ, if the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, to also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. Requires that the order of PUC, rather than TCEQ, not be effective to transfer property. Authorizes a transfer of property to only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e). Requires that the grant of single certification by PUC, rather than TCEQ, go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f) (relating to condemned property). Requires that, if the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification will go into effect when the court judgment becomes final. Requires the municipality or franchised utility to provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. Requires the notice to clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates. Makes a nonsubstantive change.

(d) Authorizes the municipality, in the event the final order of PUC, rather than TCEQ, is not appealed within 30 days, to request the district court of Travis County to enter a judgment consistent with the order of PUC, rather than TCEQ. Requires the court, in such event, to render a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by PUC's final order, rather than TCEQ's final order, and property determined by PUC, rather than TCEQ, to be rendered useless or valueless by the granting of single certification; and

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by PUC, rather than TCEQ, in its final order.

(e) Authorizes any party that is aggrieved by a final order of PUC, rather than TCEQ, under this section to file an appeal with the district court of Travis County within 30 days after the order becomes final. Requires that the hearing in such an appeal before the district court be by trial de novo on all issues. Requires that, after the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single

certification under the provisions of this section, the court enter a judgment that incorporates certain things listed in existing law. Makes a nonsubstantive change.

(g-1) Requires PUC, rather than TCEQ, to adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g) (relating to the value of certain real property and to just and adequate compensation). Requires PUC, rather than TCEQ, by rule to adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which PUC, rather than TCEQ, determines that the municipality's application is administratively complete.

(k) Provides that the following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2) (relating to the application of this section to a retail public utility in a certain case):

(1) PUC, rather than TCEQ, or court is required to determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or PUC, rather than the court or TCEQ, is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

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

(l) Requires that, for an area incorporated by a municipality, the compensation provided under Subsection (g) be determined by a qualified individual or firm to serve as independent appraiser, who is required to be selected by the affected retail public utility, and requires the costs of the appraiser to be paid by the municipality. Requires that, for an area annexed by a municipality, the compensation provided under Subsection (g) be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. Requires that the retail public utility and municipality to each appoint a qualified individual or firm to serve as independent appraiser if the retail public utility and the municipality are unable to agree on a single individual firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse. Requires that, on or before the 10th business day after the date of their appointment, the independent appraisers meet to reach an agreed determination of the amount of compensation. Authorizes the retail public utility or municipality, if the independent appraisers appointed by the retail public utility and municipality are unable to agree on a determination of the amount of compensation before the 16th business day after the date of their first meeting under this subsection, to petition PUC, rather than TCEQ, or a person PUC, rather than TCEQ, designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. Requires that the costs of the independent appraisers for an annexed area be shared equally by the retail public utility and the municipality. Provides that the determination of compensation under this subsection is binding on PUC, rather than TCEQ.

(m) Requires PUC, rather than TCEQ, to deny an application for single certification by a municipality that fails to demonstrate compliance with TCEQ's minimum requirements for public drinking water systems.

SECTION 55. Amends Section 13.2551, Water Code, as follows:

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) Authorizes PUC, rather than TCEQ, as a condition to decertification or single certification under Section 13.254 (Revocation or Amendment of Certificate) or 13.255 (Single Certification in Incorporated or Annexed Areas), and on request by an affected retail public utility, to order certain service and certain transfer of service listed in current law.

(b) Requires PUC, rather than TCEQ, to order service to the entire area under Subsection (a) if PUC, rather than TCEQ, finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) Requires PUC, rather than TCEQ, to require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and to establish the terms under which the service is required to be provided under criteria listed in current law.

(d) Prohibits the retail public utility seeking decertification from charging the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by PUC, rather than TCEQ, if applicable.

(e) Prohibits PUC, rather than TCEQ, from ordering compensation to the decertificated retail utility if service to the entire service area is ordered under this section.

SECTION 56. Amends Sections 13.257(e), (i), (r), and (s), Water Code, as follows:

(e) Provides that notice must be given to the prospective purchaser before the execution of a binding contract of purchase or sale. Provides that notice may be given separately or as an addendum to or paragraph of the contract. Authorizes the purchaser to terminate the contract if the seller fails to provide the notice required by this section. Provides that, if the seller provides the notice at or before the closing of the purchase and sale contract and the purchaser elects to close even though the notice was not timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or rights under this section. Provides that, notwithstanding any provision of this section to the contrary, a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) (authorizing a purchaser to file suit for certain damages) or (n) (authorizing a purchaser to file suit for damages in an amount not to exceed \$5,000, plus reasonable attorney's fees) or liable for any other damages to any person for:

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

(A) the utility service provider did not file the map of the certificated service area in the real property records of the county in which the service area is located and with PUC, rather than TCEQ, depicting the boundaries of the service area of the utility service provider as shown in the real property records of the county in which the service area is located; and

(B) PUC, rather than TCEQ, did not maintain an accurate map of the certificated service area of the utility service provider as required by this chapter; or

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

(i) Prohibits a purchaser, or the purchaser's heirs, successors, or assigns, if the notice is given at closing as provided by Subsection (g) (relating to the completion and execution of a certain notice), from maintaining an action for damages or maintaining an action against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, by

reason of the seller's use of the information filed with PUC, rather than TCEQ, by the utility service provider or the seller's use of the map of the certificated service area of the utility service provider filed in the real property records to determine whether the property to be purchased is within the certificated service area of the utility service provider. Prohibits an action from being maintained against a title insurance company for the failure to disclose that the described real property is included within the certificated service area of a utility service provider if the utility service provider did not file in the real property records or with PUC, rather than TCEQ, the map of the certificated service area.

(r) Requires a utility service provider to:

(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in PUC's records, rather than TCEQ's records, and a certain boundary description of the service area under criteria listed in existing law; and

(2) submit to PUC, rather than to the executive director, evidence of the recording.

(s) Requires each county to accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. Requires that the recording required by this section of a utility service provider's map be completed not later than the 31st day after the date a utility service provider receives a final order from PUC, rather than TCEQ, granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 57. Amends Sections 13.301(a), (b), (c), (d), (e), (f), and (g), Water Code, as follows:

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

(1) file a written application with PUC, rather than TCEQ; and

(2) unless public notice is waived by PUC, rather than by the executive director, for good cause shown, give public notice of the action.

(b) Authorizes PUC, rather than TCEQ, to require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) Authorizes PUC, rather than TCEQ, if the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, to require that the person provide a bond or other financial assurance in a form and amount specified by PUC, rather than TCEQ, to ensure continuous and adequate utility service is provided.

(d) Requires PUC, rather than TCEQ, to, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) Requires PUC, rather than the executive director, before the expiration of the 120-day notification period, to notify all known parties to the transaction and OPUC whether PUC will hold a public hearing to determine if the transaction will serve the public interest, rather than to notify all known parties to the transaction of the executive director's decision whether to request that TCEQ hold a public hearing to determine if the

transaction will serve the public interest. Authorizes PUC to hold, rather than authorizing the executive director to request, a hearing if:

(1) the application filed with PUC, rather than TCEQ, or the public notice was improper;

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

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

(A) noncompliance with the requirements of PUC, TCEQ, or the Department of State Health Services, rather than TCEQ or the Texas Department of Health; or

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

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

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

(f) Authorizes that the sale, acquisition, lease, or rental, unless PUC holds a public hearing, rather than unless the executive director requests that a public hearing be held, be completed as proposed:

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

(2) at any time after PUC, rather than the executive director, notifies the utility or water supply or sewer service corporation that a hearing will not be held, rather than requested.

(g) Prohibits the sale, acquisition, lease, or rental from being completed, if PUC decides to hold a hearing, rather than if a hearing is requested, or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, unless PUC, rather than TCEQ, determines that the proposed transaction serves the public interest.

SECTION 58. Amends Section 13.302, Water Code, as follows:

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) Prohibits a utility from purchasing voting stock in another utility doing business in this state and prohibits a person from acquiring a controlling interest in a utility doing business in this state unless the person or utility files a written application with PUC, rather than with TCEQ, not later than the 61st day before the date on which the transaction is to occur.

(b) Authorizes PUC, rather than TCEQ, to require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) Authorizes PUC, rather than TCEQ, if the person acquiring a controlling interest cannot demonstrate adequate financial capability, to require that the

person provide a bond or other financial assurance in a form and amount specified by PUC, rather than TCEQ, to ensure continuous and adequate utility service is provided.

(d) Authorizes PUC to hold a public hearing on the transaction if PUC believes that a criterion prescribed by Section 13.301(e) applies, rather than authorizing the executive director to request that TCEQ hold a public hearing on the transaction if the PUC, rather than executive director, believes that a criterion prescribed by Section 13.301(e) applies.

(e) Authorizes that, unless PUC holds a public hearing, rather than unless the executive director requests that a public hearing be held, the purchase or acquisition be completed as proposed:

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

(2) at any time after PUC, rather than the executive director, notifies the person or utility that a hearing will not be held, rather than requested.

(f) Prohibits the purchase or acquisition from being completed, if PUC decides to hold a hearing, rather than if a hearing is requested, or if the person or utility fails to make the application to PUC, rather than TCEQ, as required, unless PUC, rather than TCEQ, determines that the proposed transaction serves the public interest. Provides that a purchase or acquisition that is not completed in accordance with the provisions of this section is void.

SECTION 59. Amends Section 13.303, Water Code, to prohibit a utility from loaning money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the utility unless the utility reports the transaction to PUC, rather than to TCEQ, within 60 days after the date of the transaction.

SECTION 60. Amends Section 13.304, Water Code, as follows:

Sec. 13.304. FORECLOSURE REPORT. (a) Requires a utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure to notify PUC and TCEQ, rather than TCEQ alone, in writing of that fact not later than the 10th day after the date on which the utility receives the notice.

(b) Provides that a financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301 (Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction), but is required to provide written notice to PUC and TCEQ, rather than TCEQ alone, before the 30th day preceding the date on which the foreclosure is completed.

(c) Authorizes the financial institution to operate the utility for an interim period prescribed by PUC, rather than TCEQ, rule before transferring or otherwise obtaining a certificate of convenience and necessity. Provides that a financial institution that operates a utility during an interim period under this subsection is subject to each PUC rule, rather than TCEQ rule, to which the utility was subject and in the same manner.

SECTION 61. Amends Section 13.341, Water Code, to provide that PUC, rather than TCEQ, has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of PUC, rather than TCEQ, to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

SECTION 62. Amends Section 13.342, Water Code, to authorize PUC, rather than TCEQ, to require the disclosure of the identity and respective interests of every owner of any substantial

interest in the voting securities of any utility or its affiliated interest. Provides that one percent or more is a substantial interest within the meaning of this section.

SECTION 63. Amends Section 13.343(a), Water Code, as follows:

(a) Prohibits the owner of a utility that supplies retail water service from contracting to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by PUC or TCEQ, rather than by TCEQ alone, rule; or

(2) PUC, rather than the executive director, determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

SECTION 64. Amends Section 13.381, Water Code, to provide that any party to a proceeding before PUC or TCEQ, rather than TCEQ, is entitled to judicial review under the substantial evidence rule.

SECTION 65. Amends Section 13.382(a), Water Code, to authorize any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by PUC, rather than TCEQ, are excessive and who is a prevailing party in proceedings for review of a PUC, rather than TCEQ, order or decision to, in the same action, recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before PUC, rather than TCEQ, and the court.

SECTION 66. Amends Section 13.411, Water Code, as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) Authorizes the attorney general on request of PUC or TCEQ, rather than TCEQ alone, if PUC or TCEQ, rather than TCEQ alone, has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of PUC or TCEQ, rather than TCEQ alone, entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, in addition to any other remedies provided in this chapter, to bring an action in a court of competent jurisdiction in the name of and on behalf of PUC or TCEQ, rather than TCEQ alone, against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) Requires PUC or the executive director, rather than the executive director, if PUC or the executive director of TCEQ, rather than the executive director, has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, to immediately:

(1) notify the utility's representative; and

(2) initiate enforcement action consistent with:

(A) this subchapter; and

(B) procedural rules adopted by PUC or TCEQ, rather than by TCEQ alone.

SECTION 67. Amends Section 13.4115, Water Code, as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. Authorizes PUC, rather than TCEQ, in regard to a customer complaint

arising out of a charge made by a public utility, if PUC, rather than the executive director, finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of a certain complaint process established by PUC, rather than established by TCEQ, to issue an order requiring the utility to make the adjustment. Provides that failure to comply with the order within 30 days of receiving the order is a violation for which PUC, rather than TCEQ, is authorized to impose an administrative penalty under Section 13.4151 (Administrative Penalty).

SECTION 68. Amends Sections 13.412(a), (f), and (g), Water Code, as follows:

(a) Requires the attorney general, at the request of PUC or TCEQ, rather than TCEQ alone, to bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs PUC or TCEQ, rather than TCEQ alone, that the owner is abandoning the system;
- (3) violates a final order of PUC or TCEQ, rather than TCEQ alone; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of PUC or TCEQ, rather than TCEQ alone.

(f) Provides that, for purposes of this section and Section 13.4132, abandonment may include but is not limited to:

- (1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;
- (2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;
- (3) failure to adequately maintain facilities resulting in potential health hazards, extended outages, or repeated service interruptions;
- (4) failure to provide customers adequate notice of a health hazard or potential health hazard;
- (5) failure to secure an alternative available water supply during an outage;
- (6) displaying a pattern of hostility toward or repeatedly failing to respond to PUC or TCEQ, rather than TCEQ alone, or the utility's customers; and
- (7) failure to provide PUC or TCEQ, rather than TCEQ alone, with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Authorizes a receiver appointed under this section, notwithstanding Section 64.021 (Qualifications; Residence Requirement), Civil Practice and Remedies Code, to seek approval from PUC and TCEQ, rather than TCEQ approval, to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity.

SECTION 69. Amends Section 13.413, Water Code, as follows:

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. Authorizes the receiver, subject to the approval of the court and after giving notice to all interested parties, to sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been through under this subchapter to pay the costs incurred in the operation of the receivership. Provides that the costs include:

- (1) payment of fees to the receiver for his services;
- (2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and
- (2) Payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of PUC or TCEQ, rather than TCEQ alone.

SECTION 70. Amends Section 13.4131, Water Code, as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) Authorizes PUC, rather than TCEQ, after providing to the utility notice and an opportunity for a hearing, to place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter, or noncompliance with an order issued under this chapter, rather than authorizing TCEQ after providing to the utility notice and an opportunity for a hearing, to place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or TCEQ rules, or noncompliance with TCEQ orders.

(b) Authorizes PUC, rather than TCEQ, while supervising a utility, to require the utility to abide by conditions and requirements prescribed by PUC, rather than TCEQ, including:

- (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 or assets; and
- (4) a requirement that the utility place the utility's funds into an account in a financial institution approved by PUC, rather than TCEQ, and that use of those funds is required to be restricted to reasonable and necessary utility expenses.

(c) Authorizes PUC, rather than TCEQ, while supervising a utility, to require that the utility obtain approval from PUC, rather than TCEQ approval, before taking any action that may be restricted under Subsection (b). Authorizes that any action or transaction which occurs without approval be voided by PUC, rather than TCEQ. Makes conforming and nonsubstantive changes.

SECTION 71. Amends Sections 13.4132(a), (b), and (d), Water Code, as follows:

(a) Authorizes PUC or TCEQ, rather than TCEQ, after providing to the utility notice and an opportunity to be heard by the commissioners at a PUC or TCEQ meeting, rather than a TCEQ meeting, to authorize a willing person to temporarily manage and operate a utility under certain circumstances listed in existing law.

(b) Authorizes PUC or TCEQ, rather than TCEQ alone, to appoint a person under this section by emergency order, and provides that notice of the action is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters.

(d) Provides that this section does not affect the authority of PUC or TCEQ, rather than TCEQ alone, to pursue an enforcement claim against a utility or an affiliated interest.

SECTION 72. Amends Sections 13.4133(a) and (c), Water Code, as follows:

(a) Authorizes PUC, rather than TCEQ, notwithstanding the requirements of Subchapter F, rather than Section 13.187 of this code, to authorize an emergency rate increase for a

utility for which a person has been appointed under Section 13.4132 or for which a receiver has been appointed under Section 13.412 if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers. Makes nonsubstantive changes.

(c) Requires PUC, rather than TCEQ, to schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. Requires PUC, rather than TCEQ, to require the utility to provide notice of the hearing to each customer. Provides that the additional revenues collected under an emergency rate increase are subject to refund if PUC, rather than TCEQ, finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 73. Amends Sections 13.414(a) and (c), Water Code, as follows:

(a) Provides that any retail public utility or affiliated interest that violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of PUC or TCEQ, rather than TCEQ alone, or decree or judgment of a court is subject to a certain civil penalty for each violation listed in existing law.

(c) Requires the attorney general to institute suit on his own initiative or at the request of, in the name of, and on behalf of PUC or TCEQ, rather than TCEQ alone, in a court of competent jurisdiction to recover the penalty under this section.

SECTION 74. Amends Sections 13.4151(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (m), Water Code, as follows:

(a) Authorizes PUC or TCEQ, as applicable, rather than TCEQ alone, if a person, affiliated interest, or entity subject to the jurisdiction of PUC or TCEQ, rather than TCEQ alone, violates this chapter or a rule or order adopted under this chapter, to assess a penalty against that person, affiliated interest, or entity as provided by this section. Makes a conforming change.

(b) Requires PUC or TCEQ, rather than TCEQ alone, in determining the amount of the penalty, to take into account certain considerations listed in existing law.

(c) Authorizes PUC or the executive director, rather than the executive director alone, if, after examination of a possible violation and the facts surrounding that possible violation, PUC or the executive director of TCEQ, rather than the executive director alone, concludes that a violation has occurred, to issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. Requires PUC or the executive director, rather than the executive director alone, to base the recommended amount of the proposed penalty on the factors provided by Subsection (b) and to analyze each factor for the benefit of the appropriate agency, rather than TCEQ. Makes a nonsubstantive change.

(d) Requires PUC or the executive director of TCEQ, rather than the executive director alone, not later than the 10th day after the date on which the report is issued, to give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation. Requires that notice include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Authorizes the person, affiliated interest, or retail public utility charged, not later than the 20th day after the date on which notice is received, to give the appropriate agency, rather than TCEQ, written consent to the report described by Subsection (c), rather than written consent to the executive director's report, including the recommended penalty, or to make a written request for a hearing.

(f) Requires PUC or TCEQ, rather than TCEQ alone, if the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c), rather than recommended by the executive director, or fails to timely respond to the notice, by order to assess that penalty or order a hearing to be held on the findings and recommendations in the report, rather than the executive director's report. Requires PUC or TCEQ, rather than TCEQ alone, if PUC or TCEQ, rather than TCEQ alone, assesses the penalty recommended by the report, to give written notice to the person, affiliated interest, or retail public utility charged of its decision. Makes conforming changes.

(g) Requires the appropriate agency, rather than TCEQ, if the person, affiliated interest, or retail public utility charged requests or PUC or TCEQ, rather than TCEQ alone, orders a hearing, to call a hearing and give notice of the hearing. Authorizes the appropriate agency, rather than TCEQ, as a result of the hearing, by order to find that a violation has occurred and to assess a civil penalty, to find that a violation has occurred but that no penalty should be assessed, or to find that no violation has occurred. Provides that all proceedings under this subsection re subject to Chapter 2001, Government Code. Requires the appropriate agency, rather than TCEQ, in making any penalty decision, to analyze each of the factors provided by Subsection (b). Makes a nonsubstantive change.

(h) Requires PUC or TCEQ, rather than TCEQ alone, to give notice of its decision to the person, affiliated interest, or retail public utility charged, and requires the agency, rather than TCEQ, if the appropriate agency, rather than TCEQ, finds that a violation has occurred and has assessed a penalty, that agency, rather than TCEQ, is required to give certain written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's affiliated interest's, or retail public utility's rights to judicial review of the agency's order, rather than TCEQ's order. Requires the appropriate agency, rather than TCEQ, if the PUC or TCEQ, rather than TCEQ alone, is required to give notice of a penalty under this subsection or Subsection (f), to file notice of that agency's decision in the Texas Register not later than the 10th day after the date on which the decision is adopted. Makes conforming and nonsubstantive changes.

(i) Requires the person, affiliated interest, or retail public utility charged with the penalty, within the 30-day period immediately following the day on which PUC's order or TCEQ's order, rather than TCEQ's order, is final, as provided by Subchapter F (Contested Cases: Final Decisions and Orders; Motions for Rehearing), Chapter 2001 (Administrative Procedure), Government Code, to:

(1) pay the penalty in full; or

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

(A) forward the amount of the penalty to the appropriate agency, rather than TCEQ, for placement in an escrow account; or

(B) post with the appropriate agency, rather than TCEQ, a supersedeas bond in a form approved by the agency, rather than TCEQ, for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) Provides that failure to forward the money to or to post the bond with PUC or TCEQ, rather than TCEQ alone, within the time provided by Subsection (i) constitutes a waiver of all legal rights to judicial review. Authorizes the appropriate agency, rather than TCEQ, or the executive director of that agency, if the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i), to forward the matter to the attorney general for enforcement. Makes nonsubstantive changes.

(k) Provides that judicial review of the order or decision of PUC or TCEQ, rather than TCEQ alone, assessing the penalty is required to be under the substantial evidence rule

and is authorized to be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G (Contested Cases: Judicial Review), Chapter 2001, Government Code.

(m) Authorizes PUC or TCEQ, rather than TCEQ alone, notwithstanding any other provision of law, to compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

SECTION 75. Amends Section 13.417, Water Code, to authorize PUC or TCEQ, rather than TCEQ alone, if any person or retail public utility fails to comply with any lawful order of PUC or TCEQ, rather than TCEQ alone, or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he is authorized to be lawfully interrogated, to apply to any court of competent jurisdiction to compel obedience by proceedings for contempt. Makes a conforming change.

SECTION 76. Amends Section 13.418, Water Code, as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Requires that fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings be deposited in the general revenue fund, rather than paid to TCEQ and deposited in the general revenue fund.

(b) Requires that fines and penalties collected from a public utility under this chapter in other than criminal proceedings be deposited in the water utility improvement account as provided by Section 341.0485 (Water Utility Improvement Account), Health and Safety Code, rather than paid to TCEQ and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 77. Amends Section 13.501(7), Water Code, to redefine "multiple use facility" to mean commercial or industrial parks, office complexes, marinas, and others specifically identified in PUC, rather than TCEQ, rules with five or more units.

SECTION 78. Amends Section 13.502(e), Water Code, as follows:

(e) Prohibits an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium from changing from submetered billing to allocated billing unless:

(1) PUC, rather than the executive director, 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 PUC, rather than TCEQ.

SECTION 79. Amends Sections 13.503(a), (b), and (e), Water Code, as follows:

(a) Requires PUC, rather than TCEQ, to encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Requires PUC, rather than TCEQ, notwithstanding any other law, to 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 is authorized to 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. Requires the rules to require that, in addition to other appropriate safeguards for the tenant, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use

facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager are required to maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. Requires the rules allow an owner or manager to charge a tenant or fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. Provides that all submetering equipment is subject to the rules and standards established by PUC, rather than TCEQ, for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 (Examination and Test of Equipment). Makes a nonsubstantive change.

(e) Authorizes PUC, rather than TCEQ, to authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

SECTION 80. Amends Section 13.5031, Water Code, to require PUC, rather than TCEQ, notwithstanding any other law, to adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. Requires the rules, in addition to other appropriate safeguards for the tenant, to require certain criteria listed in existing law.

SECTION 81. Amends Section 13.505, Water Code, as follows:

Sec. 13.505. ENFORCEMENT. Authorizes the tenant, in addition to the enforcement provisions contained in Subchapter K (Violations and Enforcement), if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of PUC, rather than TCEQ, regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, to recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. Provides, however, that an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake. Makes a nonsubstantive change.

SECTION 82. Amends Section 13.512, Water Code, as follows:

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Authorizes any eligible city to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Provides that any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Requires each eligible city to file a copy of its privatization contract with PUC, rather than TCEQ, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

SECTION 83. Amends Section 13.513, Water Code, as follows:

Sec. 13.513. New heading: ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. Prohibits a service provider from constituting a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to PUC, rather than TCEQ; provided that, however, this provision is prohibited from affecting the application of this

chapter to an eligible city itself. Authorizes any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city, notwithstanding anything contained in this section, to be a “public utility” for the purposes of this chapter with respect to such other person or municipality. Makes nonsubstantive changes.

SECTION 84. Amends Section 49.352(c), Water Code, to authorize a municipality, for purposes of this section, to obtain single certification in the manner provided by Section 13.255, except that the municipality is authorized to file an application with PUC, rather than TCEQ, to grant single certification immediately after the municipality provides notice of intent to provide service as required by Section 13.255(b).

SECTION 85. Amends Section 552.047(e), Local Government Code, to authorize users residing within the established service area, but outside the municipality's boundaries, to appeal rates established for drainage charges under Section 13.043(b), Water Code, rather than to TNRCC as authorized by Section 13.043(b) of the Water Code.

SECTION 86. Amends Section 7201.004(b), Special District Local Laws Code, to provide that this section does not apply to rules or regulations concerning potable water quality standards or conflicts relating to service areas or certificates issued to the district by PUC or TCEQ, rather than by TCEQ alone.

SECTION 87. Amends Section 7201.005(c), Special District Local Laws Code, to authorize district boundaries to be modified in accordance with Chapters 13 and 49 (Provisions Applicable to All Districts), Water Code, except that the boundaries are required to include all territory in any area included under a certificate of convenience and necessity issued by PUC or TCEQ, rather than TCEQ alone, to the district.

SECTION 88. Amends Section 7201.102, Special District Local Laws Code, to require the district to at all times operate and construct necessary improvements within the certificated areas established by PUC or TCEQ, rather than TCEQ alone, to provide uninterrupted, continuous, and adequate service to existing and future customers for water, sewer, and contract services.

SECTION 89. Amends Section 8363.106(b), Special District Local Laws Code, to authorize the district, in relation to a retail public utility that provides water or sewer service to all or part of the area of the district under a certificate of public convenience and necessity, to exercise the powers given to a municipality provided by Section 13.255, Water Code, as if the district were a municipality that had annexed the area of the district. Requires PUC, rather than TCEQ, to grant single certification as to the city as provided by Section 13.255(c), Water Code, in the event that the district applies for the certification on the city's behalf in the manner provided by Section 13.255(b), Water Code.

SECTION 90. Amends Section 8363.251(a), Special District Local Laws Code, as follows:

(a) Authorizes the city to dissolve the district by ordinance after provision is made for all debts incurred by the district if one or more of the following does not occur:

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

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

(3) on or before the last day of the third year after the effective date of the Act enacting this chapter, PUC, rather than TCEQ, issues an order approving the sale and transfer of a certificate of public convenience and necessity authorizing the city to provide retail water service to territory in the district; or

(4) by the end of the fifth year after the effective date of the Act enacting this chapter, the district has completed construction of internal streets and water and

sanitary sewer facilities sufficient to serve at least 100 residential lots in the district.

SECTION 91. Amends Section 8801.201, Special District Local Laws Code, as follows:

Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) Authorizes a person who is required to convert to surface water under this chapter (Harris-Galveston Subsidence District) and who purchases that water supply wholesale from a political subdivision as defined by Section 12.013(b) (defining "political subdivision"), Water Code, to appeal to PUC, rather than TCEQ, the rates the political subdivision charges to the person. Provides that Chapter 12, Water Code, and rules adopted under that chapter apply to an appeal under this section.

(b) Requires PUC, rather than TCEQ, to hear the appeal not later than the 180th day after the date the appeal is filed.

(c) Requires PUC, rather than TCEQ, to issue a final decision on the appeal not later than the 60th day after the date the hearing ends.

SECTION 92. (a) Provides that on September 1, 2014, the following are transferred from TCEQ to PUC:

(1) the powers, duties, functions, programs, and activities of TCEQ 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 Sections 11.041 (Denial of Water: Complaint) and 12.013 and Chapter 13, Water Code, as provided by this Act;

(2) any obligations and contracts of TCEQ that are directly related to implementing a power, duty, function, program, or activity transferred under this Act; and

(3) all property and records in the custody of TCEQ that are related to a power, duty, function, program, or activity transferred under this Act and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) Requires TCEQ to continue to carry out TCEQ's duties related to the economic regulation of water and sewer service under the law as it existed immediately before the effective date of this Act until September 1, 2014, and continues the former law in effect for that purpose.

(c) Requires TCEQ and PUC to enter into a memorandum of understanding that:

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

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of TCEQ that are used for purposes of TCEQ's powers and duties directly related to the economic regulation of water and sewer service under Sections 11.041 and 12.013 and Chapter 13, Water Code, as amended by this Act; and

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer service under Sections 11.041 and 12.013 and Chapter 13, Water Code, as amended by this Act, from TCEQ to PUC.

(d) Provides that the memorandum of understanding under this section is not required to be adopted by rule under Section 5.104 (Memoranda of Understanding), Water Code, and is required to be completed by August 1, 2014.

(e) Authorizes the executive directors of TCEQ and PUC to agree in the memorandum of understanding under this section to transfer to PUC any personnel of TCEQ whose functions predominantly involve powers, duties, obligations, functions, and activities related to the economic regulation of water and sewer service under Sections 11.041 and 12.013 and Chapter 13, Water Code, as amended by this Act.

(f) Requires TCEQ and PUC to periodically update OPUC on the anticipated contents of the memorandum of understanding under this section during the development of the memorandum.

(g) Authorizes OPUC, on or after September 1, 2013, to initiate or intervene in a contested case before TCEQ that OPUC would be entitled to initiate or intervene in if the case were before PUC, as authorized by Chapter 13, Water Code, as amended by this Act.

(h) Requires TCEQ and PUC to appoint a transition team to accomplish the purposes of this section. Authorizes the transition team to consult with OPUC to accomplish the purposes of this section. Requires the transition team to establish guidelines on how the two agencies will cooperate regarding:

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

(i) Requires the transition team appointed under Subsection (h) of this section to provide monthly updates to the executive directors of TCEQ and PUC on the implementation of this Act and provide a final report on the implementation to the executive directors not later than September 1, 2014.

(j) Provides that a rule, form, policy, procedure, or decision of TCEQ related to a power, duty, function, program, or activity transferred under this Act continues in effect as a rule, form, policy, procedure, or decision of PUC and remains in effect until amended or replaced by that agency. Authorizes PUC, notwithstanding any other law, beginning September 1, 2013, to propose rules, forms, policies, and procedures related to a function to be transferred to PUC under this Act.

(k) Requires PUC and TCEQ to adopt rules to implement the changes in law made by this Act to Sections 11.041 and 12.013 and Chapter 13, Water Code, not later than September 1, 2015.

(l) Prohibits an affiliate of a Class A utility, as those terms are defined by Section 13.002, Water Code, as amended by this Act, from filing an application for a rate change on or after the effective date of this Act unless the affiliated Class A utility has filed for a rate change on or after that date. Provides that, in relation to the application filed by the affiliate of the Class A utility, PUC:

- (1) is prohibited from approving the rate change application until PUC approves the rate change application filed by the affiliated Class A utility; and
- (2) is authorized to require the affiliate to comply with the Class A utility rate change process prescribed by Section 13.187, Water Code, regardless of whether the affiliate is classified as a Class A, B, or C utility under Section 13.002, Water Code, as added by this Act.

SECTION 93. Provides for the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2013.