

By: Geren

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A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to rates for water service, to the transfer of functions  
3 relating to the economic regulation of water and sewer service from  
4 the Texas Commission on Environmental Quality to the Public Utility  
5 Commission of Texas, and to the duties of the Office of Public  
6 Utility Counsel regarding the economic regulation of water service.

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

8 SECTION 1. Section 5.013(a), Water Code, is amended to read  
9 as follows:

10 (a) The commission has general jurisdiction over:

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

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

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

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

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

11 (10) the state's responsibilities relating to regional  
12 waste disposal:

15 (12) [administration of the state's water rate program  
16 under Chapter 13 of this code, and]

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

19 SECTION 2. Section 5.311(a), Water Code, is amended to read  
20 as follows:

21                   (a) The commission may delegate to an administrative law  
22 judge of the State Office of Administrative Hearings the  
23 responsibility to hear any matter before the commission [and to  
24 issue interlocutory orders related to interim rates under Chapter  
25 13].

26 SECTION 3. Section 5.507, Water Code, is amended to read as  
27 follows:

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

8           SECTION 4. Sections 5.508(a) and (c), Water Code, are  
9 amended to read as follows:

10           (a) Notwithstanding the requirements of Subchapter F,  
11 Chapter 13 [~~Section 13.187~~], the Public Utility Commission of Texas  
12 [~~commission~~] may authorize an emergency rate increase for a utility  
13 for which a person has been appointed under Section 5.507 or 13.4132  
14 [~~13.412~~] or for which a receiver has been appointed under Section  
15 13.412 [~~13.4132~~] if the increase is necessary to ensure the  
16 provision of continuous and adequate services to the utility's  
17 customers. The Public Utility Commission of Texas shall consult  
18 with the commission as needed to carry out this section.

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

27           SECTION 5. Section 11.002, Water Code, is amended by adding

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1 Subdivision (21) to read as follows:

4 SECTION 6. Section 11.041, Water Code, is amended to read as  
5 follows:

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

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

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

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

18 (4) that the party owning or controlling the water  
19 supply fails or refuses to supply the available water to the  
20 petitioner, or that the price or rental demanded for the available  
21 water is not reasonable and just or is discriminatory.

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

26 (c) If, after preliminary investigation, the executive  
27 director of the utility commission determines that probable grounds

1 exist for the complaint, the utility commission shall enter an  
2 order setting a time and place for a hearing on the petition.

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

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

11 (f) The utility commission shall hold a hearing on the  
12 complaint at the time and place stated in the order. It may hear  
13 evidence orally or by affidavit in support of or against the  
14 complaint, and it may hear arguments. The commission may  
15 participate in the hearing for the purpose of presenting evidence  
16 on the availability of the water requested by the petitioner. On  
17 completion of the hearing, the utility commission shall render a  
18 written decision.

19 (g) If, after the preliminary investigation, the executive  
20 director of the utility commission determines that no probable  
21 grounds exist for the complaint, the executive director of the  
22 utility commission shall dismiss the complaint. The utility  
23 commission may either return the deposit or pay it into the State  
24 Treasury.

25 SECTION 7. Section 12.013, Water Code, is amended to read as  
26 follows:

27 Sec. 12.013. RATE-FIXING POWER. (a) The utility

1 commission shall fix reasonable rates for the furnishing of raw or  
2 treated water for any purpose mentioned in Chapter 11 or 12 of this  
3 code.

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

8 (c) The utility commission in reviewing and fixing  
9 reasonable rates for furnishing water under this section may use  
10 any reasonable basis for fixing rates as may be determined by the  
11 utility commission to be appropriate under the circumstances of the  
12 case being reviewed; provided, however, the utility commission may  
13 not fix a rate which a political subdivision may charge for  
14 furnishing water which is less than the amount required to meet the  
15 debt service and bond coverage requirements of that political  
16 subdivision's outstanding debt.

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

21 (e) The utility commission may establish interim rates and  
22 compel continuing service during the pendency of any rate  
23 proceeding.

24 (f) The utility commission may order a refund or assess  
25 additional charges from the date a petition for rate review is  
26 received by the utility commission of the difference between the  
27 rate actually charged and the rate fixed by the utility commission,

1 plus interest at the statutory rate.

2 ~~[(g) No action or proceeding commenced prior to January 1,~~  
3 ~~1977, before the Texas Water Rights Commission shall be affected by~~  
4 ~~the enactment of this section.~~

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

7 SECTION 8. Section 13.002, Water Code, is amended by  
8 amending Subdivisions (2) and (18) and adding Subdivisions (4-a),  
9 (4-b), (4-c), and (22-a) to read as follows:

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

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

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

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

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

27 (E) any person who is an officer or director of a

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1 utility or of any corporation in any chain of successive ownership  
2 of five percent or more of voting securities of a public utility;

(F) any person or corporation that the utility

4 commission, after notice and hearing, determines actually  
5 exercises any substantial influence or control over the policies  
6 and actions of a utility or over which a utility exercises such  
7 control or that is under common control with a utility, such control  
8 being the possession directly or indirectly of the power to direct  
9 or cause the direction of the management and policies of another,  
10 whether that power is established through ownership or voting of  
11 securities or by any other direct or indirect means; or

(G) any person or corporation that the utility

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

(4-a) "Class A utility" means:

(B) an affiliate of a public utility described by

## 24 Paragraph (A).

1                   (4-c) "Class C utility" means a public utility that  
2 provides retail water or sewer utility service through fewer than  
3 500 taps or connections.

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

7                   (22-a) "Utility commission" means the Public Utility  
8 Commission of Texas.

9                   SECTION 9. Section 13.004, Water Code, is amended to read as  
10 follows:

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

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

20                  (2) is operating in a manner that does not comply with  
21 the requirements for classifications as a nonprofit water supply or  
22 sewer service corporation prescribed by Sections 13.002(11) and  
23 (24).

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

1 SECTION 10. Section 13.011, Water Code, is amended to read  
2 as follows:

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

9 (b) The executive director and the commission's staff are  
10 responsible for the gathering of information relating to all  
11 matters within the jurisdiction of the commission under this  
12 subchapter. The utility commission and the utility commission's  
13 staff are responsible for the gathering of information relating to  
14 all matters within the jurisdiction of the utility commission under  
15 this subchapter. The duties of the utility commission, the  
16 executive director, and the respective staff include:

17 (1) accumulation of evidence and other information  
18 from water and sewer utilities, [and] from the agency and governing  
19 body, [commission and the board] and from other sources for the  
20 purposes specified by this chapter;

21 (2) preparation and presentation of evidence before  
22 the agency [commission] or its appointed examiner in proceedings;

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

25 (4) preparation of recommendations that the agency  
26 [commission] undertake an investigation of any matter within its  
27 jurisdiction;

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1 (5) preparation of recommendations and a report for  
2 inclusion in the annual report of the agency [redacted];

3 (6) protection and representation of the public  
4 interest [ ~~, together with the public interest advocate,~~ ] before the  
5 agency [ ~~commission~~ ]; and

6 (7) other activities that are reasonably necessary to  
7 enable the utility commission and the executive director and the  
8 respective staff to perform their duties.

9 SECTION 11. Section 13.014, Water Code, is amended to read  
10 as follows:

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

15 SECTION 12. Subchapter B, Chapter 13, Water Code, is  
16 amended by adding Section 13.017 to read as follows:

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

20                   (b) The independent Office of Public Utility Counsel  
21 represents the interests of residential and small commercial  
22 consumers under this chapter. The office:

1       substantial number of residential consumers;

2               (3) may appear or intervene, as a party or otherwise,

3       as a matter of right on behalf of:

4               (A) residential consumers, as a class, in any

5       proceeding before the utility commission, including an alternative

6       dispute resolution proceeding; and

7               (B) small commercial consumers, as a class, in

8       any proceeding in which the counsellor determines that small

9       commercial consumers are in need of representation, including an

10       alternative dispute resolution proceeding;

11               (4) may initiate or intervene as a matter of right or

12       otherwise appear in a judicial proceeding:

13               (A) that involves an action taken by an

14       administrative agency in a proceeding, including an alternative

15       dispute resolution proceeding, in which the counsellor is

16       authorized to appear; or

17               (B) in which the counsellor determines that

18       residential consumers or small commercial consumers are in need of

19       representation;

20               (5) is entitled to the same access as a party, other

21       than utility commission staff, to records gathered by the utility

22       commission under Section 13.133;

23               (6) is entitled to discovery of any nonprivileged

24       matter that is relevant to the subject matter of a proceeding or

25       petition before the utility commission;

26               (7) may represent an individual residential or small

27       commercial consumer with respect to the consumer's disputed

1 complaint concerning retail utility services that is unresolved  
2 before the utility commission;

3 (8) may recommend legislation to the legislature that  
4 the office determines would positively affect the interests of  
5 residential and small commercial consumers; and

6 (9) may conduct customer outreach and education  
7 programs for residential and small commercial customers.

8 (c) This section does not:

9 (1) affect a duty the office is required to perform  
10 under other law; or

11 (2) limit the authority of the utility commission to  
12 represent residential or small commercial consumers.

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

17 SECTION 13. Section 13.041, Water Code, is amended to read  
18 as follows:

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

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

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

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

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

19 (1) to compel a water or sewer service provider that  
20 has obtained or is required to obtain a certificate of public  
21 convenience and necessity to provide continuous and adequate water  
22 service, sewer service, or both, if the discontinuance of the  
23 service is imminent or has occurred because of the service  
24 provider's actions or failure to act; and

25 (2) to compel a retail public utility to provide an  
26 emergency interconnection with a neighboring retail public utility  
27 for the provision of temporary water or sewer service, or both, for

1 not more than 90 days if service discontinuance or serious  
2 impairment in service is imminent or has occurred.

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

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

12 (g) The regulatory assessment required by Section 5.701(n)  
13 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the  
14 utility commission under Section 13.043 [~~of this code~~]. The  
15 commission has the authority to enforce payment and collection of  
16 the regulatory assessment.

17 SECTION 14. Section 13.042, Water Code, is amended to read  
18 as follows:

19 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND  
20 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the  
21 limitations imposed in this chapter and for the purpose of  
22 regulating rates and services so that those rates may be fair, just,  
23 and reasonable and the services adequate and efficient, the  
24 governing body of each municipality has exclusive original  
25 jurisdiction over all water and sewer utility rates, operations,  
26 and services provided by a water and sewer utility within its  
27 corporate limits.

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

17                   (e) The utility commission shall have exclusive original  
18 jurisdiction over water and sewer utility rates, operations, and  
19 services not within the incorporated limits of a municipality  
20 exercising exclusive original jurisdiction over those rates,  
21 operations, and services as provided in this chapter.

22 (f) This subchapter does not give the utility commission  
23 power or jurisdiction to regulate or supervise the rates or service  
24 of a utility owned and operated by a municipality, directly or  
25 through a municipally owned corporation, within its corporate  
26 limits or to affect or limit the power, jurisdiction, or duties of a  
27 municipality that regulates land and supervises water and sewer

1 utilities within its corporate limits, except as provided by this  
2 code.

3 SECTION 15. Sections 13.043(a), (b), (c), (e), (f), (g),  
4 (h), and (j), Water Code, are amended to read as follows:

5 (a) Any party to a rate proceeding before the governing body  
6 of a municipality may appeal the decision of the governing body to  
7 the utility commission. This subsection does not apply to a  
8 municipally owned utility. An appeal under this subsection must be  
9 initiated within 90 days after the date of notice of the final  
10 decision by the governing body, or within 30 days if the appeal  
11 relates to the rates of a Class A utility, by filing a petition for  
12 review with the utility commission and by serving copies on all  
13 parties to the original rate proceeding. The utility commission  
14 shall hear the appeal de novo and shall fix in its final order the  
15 rates the governing body should have fixed in the action from which  
16 the appeal was taken and may include reasonable expenses incurred  
17 in the appeal proceedings. The utility commission may establish  
18 the effective date for the utility commission's rates at the  
19 original effective date as proposed by the utility provider and may  
20 order refunds or allow a surcharge to recover lost revenues. The  
21 utility commission may consider only the information that was  
22 available to the governing body at the time the governing body made  
23 its decision and evidence of reasonable expenses incurred in the  
24 appeal proceedings.

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

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

25 (e) In an appeal under Subsection (b) [of this section], the  
26 utility commission shall hear the appeal de novo and shall fix in  
27 its final order the rates the governing body should have fixed in

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

17 (f) A retail public utility that receives water or sewer  
18 service from another retail public utility or political subdivision  
19 of the state, including an affected county, may appeal to the  
20 utility commission a decision of the provider of water or sewer  
21 service affecting the amount paid for water or sewer service. An  
22 appeal under this subsection must be initiated within 90 days after  
23 the date of notice of the decision is received from the provider of  
24 water or sewer service by the filing of a petition by the retail  
25 public utility.

26 (g) An applicant for service from an affected county or a  
27 water supply or sewer service corporation may appeal to the utility

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

21 (h) The utility commission may, on a motion by the utility  
22 commission [~~executive director~~] or by the appellant under  
23 Subsection (a), (b), or (f) [~~of this section~~], establish interim  
24 rates to be in effect until a final decision is made.

25 (j) In an appeal under this section, the utility commission  
26 shall ensure that every rate made, demanded, or received by any  
27 retail public utility or by any two or more retail public utilities

1 jointly shall be just and reasonable. Rates shall not be  
2 unreasonably preferential, prejudicial, or discriminatory but  
3 shall be sufficient, equitable, and consistent in application to  
4 each class of customers. The utility commission shall use a  
5 methodology that preserves the financial integrity of the retail  
6 public utility. For agreements between municipalities the utility  
7 commission shall consider the terms of any wholesale water or sewer  
8 service agreement in an appellate rate proceeding.

9 SECTION 16. Section 13.044(b), Water Code, is amended to  
10 read as follows:

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

19 SECTION 17. Section 13.046, Water Code, is amended to read  
20 as follows:

21 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR  
22 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The  
23 utility commission by rule shall establish a procedure that allows  
24 a retail public utility that takes over the provision of services  
25 for a nonfunctioning retail water or sewer utility service provider  
26 to charge a reasonable rate for the services provided to the  
27 customers of the nonfunctioning system and to bill the customers

1 for the services at that rate immediately to recover service costs.

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

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

20             SECTION 18. Section 13.081, Water Code, is amended to read  
21 as follows:

22             Sec. 13.081. FRANCHISES. This chapter may not be construed  
23 as in any way limiting the rights and powers of a municipality to  
24 grant or refuse franchises to use the streets and alleys within its  
25 limits and to make the statutory charges for their use, but no  
26 provision of any franchise agreement may limit or interfere with  
27 any power conferred on the utility commission by this chapter. If a

1 municipality performs regulatory functions under this chapter, it  
2 may make such other charges as may be provided in the applicable  
3 franchise agreement, together with any other charges permitted by  
4 this chapter.

5 SECTION 19. Section 13.082, Water Code, is amended to read  
6 as follows:

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

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

24 (c) Notwithstanding any election, the utility commission  
25 may consider water and sewer utilities' revenues and return on  
26 investment in exempt areas in fixing rates and charges in nonexempt  
27 areas and may also exercise the powers conferred necessary to give

1 effect to orders under this chapter for the benefit of nonexempt  
2 areas. Likewise, in fixing rates and charges in the exempt area,  
3 the governing body may consider water and sewer utilities' revenues  
4 and return on investment in nonexempt areas.

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

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

13 SECTION 20. Section 13.085, Water Code, is amended to read  
14 as follows:

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

24 SECTION 21. Section 13.087(c), Water Code, is amended to  
25 read as follows:

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

1 SECTION 22. Sections 13.131(a), (b), (c), and (e), Water  
2 Code, are amended to read as follows:

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

13 (b) In the case of a utility subject to regulation by a  
14 federal regulatory agency, compliance with the system of accounts  
15 prescribed for the particular class of utilities by that agency may  
16 be considered a sufficient compliance with the system prescribed by  
17 the utility commission. However, the utility commission may  
18 prescribe forms of books, accounts, records, and memoranda covering  
19 information in addition to that required by the federal agency. The  
20 system of accounts and the forms of books, accounts, records, and  
21 memoranda prescribed by the utility commission for a utility or  
22 class of utilities may not conflict or be inconsistent with the  
23 systems and forms established by a federal agency for that utility  
24 or class of utilities.

25 (c) The utility commission shall fix proper and adequate  
26 rates and methods of depreciation, amortization, or depletion of  
27 the several classes of property of each utility and shall require

1 every utility to carry a proper and adequate depreciation account  
2 in accordance with those rates and methods and with any other rules  
3 the utility commission prescribes. Rules adopted under this  
4 subsection must require the book cost less net salvage of  
5 depreciable utility plant retired to be charged in its entirety to  
6 the accumulated depreciation account in a manner consistent with  
7 accounting treatment of regulated electric and gas utilities in  
8 this state. Those rates, methods, and accounts shall be utilized  
9 uniformly and consistently throughout the rate-setting and appeal  
10 proceedings.

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

17 SECTION 23. Section 13.132, Water Code, is amended to read  
18 as follows:

19 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility  
20 commission may:

21 (1) require that water and sewer utilities report to  
22 it any information relating to themselves and affiliated interests  
23 both inside and outside this state that it considers useful in the  
24 administration of this chapter, including any information relating  
25 to a transaction between the utility and an affiliated interest  
26 inside or outside this state, to the extent that the transaction is  
27 subject to the utility commission's jurisdiction;

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4 (4) require that any reports be made under oath;  
5 (5) require that a copy of any contract or arrangement  
6 between any utility and any affiliated interest be filed with it and  
7 require that such a contract or arrangement that is not in writing  
8 be reduced to writing;

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

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

22 SECTION 24. Section 13.1325, Water Code, is amended to read  
23 as follows:

24 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On  
25 request, the utility commission [state agency with jurisdiction  
26 over rates charged by water and sewer utilities] shall provide, at a  
27 reasonable cost, electronic copies of or Internet access to all

1 information provided to the utility commission ~~[agency]~~ under  
2 Sections 13.016 and ~~[T]~~ 13.043~~[T]~~ and Subchapter F ~~[13.187]~~ to the  
3 extent that the information is available and is not confidential.  
4 Copies of all information provided to the utility commission  
5 ~~[agency]~~ shall be provided to the Office of Public Utility Counsel,  
6 on request, at no cost to the office.

7 SECTION 25. Section 13.133(b), Water Code, is amended to  
8 read as follows:

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

16 SECTION 26. Section 13.136, Water Code, is amended by  
17 amending Subsections (b) and (c) and adding Subsection (b-1) to  
18 read as follows:

19 (b) The utility commission by rule shall require each ~~[Each]~~  
20 utility to annually ~~[shall]~~ file a service, [and] financial, and  
21 earnings report in a form and at times specified by utility  
22 commission rule. The report must include information sufficient to  
23 enable the utility commission to properly monitor utilities in this  
24 state. The report is a public document, to the extent that the  
25 information in the report is not confidential. The utility  
26 commission shall redact any confidential information before making  
27 the report available to the public.

1            (b-1) The utility commission shall provide unredacted  
2 copies of a report described by Subsection (b) to the Office of  
3 Public Utility Counsel on request, at no cost to the office.

4            (c) Every water supply or sewer service corporation shall  
5 file with the utility commission tariffs showing all rates that are  
6 subject to the appellate jurisdiction of the utility commission and  
7 that are in force at the time for any utility service, product, or  
8 commodity offered. Every water supply or sewer service corporation  
9 shall file with and as a part of those tariffs all rules and  
10 regulations relating to or affecting the rates, utility service,  
11 product, or commodity furnished. The filing required under this  
12 subsection shall be for informational purposes only.

13            SECTION 27. Section 13.137, Water Code, is amended to read  
14 as follows:

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

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

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

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

25                (2) have an office in a county of this state or in the  
26 immediate area in which its property or some part of its property is  
27 located in which it shall keep all books, accounts, records, and

1 memoranda required by the utility commission to be kept in this  
2 state.

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

10 (c) Books, accounts, records, or memoranda required by the  
11 regulatory authority to be kept in the state may not be removed from  
12 the state, except on conditions prescribed by the utility  
13 commission.

14 SECTION 28. Sections 13.1396(b), (c), and (f), Water Code,  
15 are amended to read as follows:

16 (b) An affected utility shall submit to the office of  
17 emergency management of each county in which the utility has more  
18 than one customer, the utility commission [Public Utility  
19 Commission of Texas], and the office of emergency management of the  
20 governor a copy of:

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

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

25 (c) Each affected utility shall submit to the utility  
26 commission, each electric utility that provides transmission and  
27 distribution service to the affected utility, each retail electric

1 provider that sells electric power to the affected utility, the  
2 office of emergency management of each county in which the utility  
3 has water and wastewater facilities that qualify for critical load  
4 status under rules adopted by the utility commission [~~Public~~  
~~Utility Commission of Texas, the Public Utility Commission of~~  
~~Texas~~], and the division of emergency management of the governor:

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

10 (2) emergency contact information for the affected  
11 utility, including:

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

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

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

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

22 SECTION 29. Section 13.142(b), Water Code, is amended to  
23 read as follows:

24 (b) The utility commission shall adopt rules concerning  
25 payment of utility bills that are consistent with Chapter 2251,  
26 Government Code.

27 SECTION 30. Section 13.144, Water Code, is amended to read

1 as follows:

2           Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A  
3 district or authority created under Section 52, Article III, or  
4 Section 59, Article XVI, Texas Constitution, a retail public  
5 utility, a wholesale water service, or other person providing a  
6 retail public utility with a wholesale water supply shall provide  
7 the utility commission with a certified copy of any wholesale water  
8 supply contract with a retail public utility within 30 days after  
9 the date of the execution of the contract. The submission must  
10 include the amount of water being supplied, term of the contract,  
11 consideration being given for the water, purpose of use, location  
12 of use, source of supply, point of delivery, limitations on the  
13 reuse of water, a disclosure of any affiliated interest between the  
14 parties to the contract, and any other condition or agreement  
15 relating to the contract.

16           SECTION 31. Section 13.147(a), Water Code, is amended to  
17 read as follows:

18           (a) A retail public utility providing water service may  
19 contract with a retail public utility providing sewer service to  
20 bill and collect the sewer service provider's fees and payments as  
21 part of a consolidated process with the billing and collection of  
22 the water service provider's fees and payments. The water service  
23 provider may provide that service only for customers who are served  
24 by both providers in an area covered by both providers'  
25 certificates of public convenience and necessity. If the water  
26 service provider refuses to enter into a contract under this  
27 section or if the water service provider and sewer service provider

1 cannot agree on the terms of a contract, the sewer service provider  
2 may petition the utility commission to issue an order requiring the  
3 water service provider to provide that service.

4 SECTION 32. Section 13.181(b), Water Code, is amended to  
5 read as follows:

6 (b) Subject to this chapter, the utility commission has all  
7 authority and power of the state to ensure compliance with the  
8 obligations of utilities under this chapter. For this purpose the  
9 regulatory authority may fix and regulate rates of utilities,  
10 including rules and regulations for determining the classification  
11 of customers and services and for determining the applicability of  
12 rates. A rule or order of the regulatory authority may not conflict  
13 with the rulings of any federal regulatory body. The utility  
14 commission may adopt rules which authorize a utility which is  
15 permitted under Section 13.242(c) to provide service without a  
16 certificate of public convenience and necessity to request or  
17 implement a rate increase and operate according to rules,  
18 regulations, and standards of service other than those otherwise  
19 required under this chapter provided that rates are just and  
20 reasonable for customers and the utility and that service is safe,  
21 adequate, efficient, and reasonable.

22 SECTION 33. Sections 13.182(c) and (d), Water Code, are  
23 amended to read as follows:

24 (c) For ratemaking purposes, the utility commission may  
25 treat two or more municipalities served by a utility as a single  
26 class wherever the utility commission considers that treatment to  
27 be appropriate.

1                   (d) The utility commission by rule shall establish a  
2 preference that rates under a consolidated tariff be consolidated  
3 by region. The regions under consolidated tariffs must be  
4 determined on a case-by-case basis.

5                   SECTION 34. Section 13.183(d), Water Code, is amended to  
6 read as follows:

7                   (d) A regulatory authority other than the utility  
8 commission may not approve an acquisition adjustment for a system  
9 purchased before the effective date of an ordinance authorizing  
10 acquisition adjustments.

11                  SECTION 35. Section 13.184(a), Water Code, is amended to  
12 read as follows:

13                  (a) Unless the utility commission establishes alternate  
14 rate methodologies in accordance with Section 13.183(c), the  
15 utility commission may not prescribe any rate that will yield more  
16 than a fair return on the invested capital used and useful in  
17 rendering service to the public. The governing body of a  
18 municipality exercising its original jurisdiction over rates and  
19 services may use alternate ratemaking methodologies established by  
20 ordinance or by utility commission rule in accordance with Section  
21 13.183(c). Unless the municipal regulatory authority uses  
22 alternate ratemaking methodologies established by ordinance or by  
23 utility commission rule in accordance with Section 13.183(c), it  
24 may not prescribe any rate that will yield more than a fair return  
25 on the invested capital used and useful in rendering service to the  
26 public.

27                  SECTION 36. Sections 13.185(d) and (h), Water Code, are

1 amended to read as follows:

2 (d) Net income is the total revenues of the utility less all  
3 reasonable and necessary expenses as determined by the regulatory  
4 authority. The regulatory authority shall:

5 (1) base a utility's expenses on test year  
6 information; and

7 (2) determine expenses and revenues in a manner  
8 consistent with Subsections (e) through (h) of this section.

9 (h) The regulatory authority may not include for ratemaking  
10 purposes:

11 (1) legislative advocacy expenses, whether made  
12 directly or indirectly, including legislative advocacy expenses  
13 included in trade association dues;

14 (2) costs of processing a refund or credit under this  
15 subchapter [~~Section 13.187 of this chapter~~]; or

16 (3) any expenditure found by the regulatory authority  
17 to be unreasonable, unnecessary, or not in the public interest,  
18 including executive salaries, advertising expenses, legal  
19 expenses, and civil penalties or fines.

20 SECTION 37. Section 13.187, Water Code, is amended to read  
21 as follows:

22 Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO  
23 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This  
24 section applies only to a Class A utility.

25 (a-1) A utility may not make changes in its rates except by  
26 delivering a statement of intent to each ratepayer and with the  
27 regulatory authority having original jurisdiction at least 35 [~~60~~]

1 days before the effective date of the proposed change. The  
2 effective date of the new rates must be the first day of a billing  
3 period, and the new rates may not apply to service received before  
4 the effective date of the new rates. The statement of intent must  
5 include:

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

8 (2) a billing comparison regarding the existing water  
9 rate and the new water rate computed for the use of:

10 (A) 10,000 gallons of water; and

11 (B) 30,000 gallons of water; ~~and~~

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

15 (4) a description of the process by which a ratepayer  
16 may intervene in the ratemaking proceeding.

17 (b) The utility shall mail, send by e-mail, or deliver a [A]  
18 copy of the statement of intent [shall be mailed, sent by e-mail, or  
19 delivered] to the Office of Public Utility Counsel, appropriate  
20 offices of each affected municipality, and [to] any other affected  
21 persons as required by the regulatory authority's rules.

22 (c) When the statement of intent is delivered, the utility  
23 shall file with the regulatory authority an application to change  
24 rates. The application must include information the regulatory  
25 authority requires by rule and any appropriate cost and rate  
26 schedules supporting the requested rate increase. If the utility  
27 fails to provide within a reasonable time after the application is

1 filed the necessary documentation or other evidence that supports  
2 the costs and expenses that are shown in the application, the  
3 regulatory authority may disallow the nonsupported costs or  
4 expenses.

5 (d) Except as provided by Subsections ~~[Subsection]~~ (d-1)  
6 and (e), if the application or the statement of intent is not  
7 substantially complete or does not comply with the regulatory  
8 authority's rules, it may be rejected and the effective date of the  
9 rate change may be suspended until a properly completed application  
10 is accepted by the regulatory authority and a proper statement of  
11 intent is provided. The utility commission may also suspend the  
12 effective date of any rate change if the utility does not have a  
13 certificate of public convenience and necessity or a completed  
14 application for a certificate or to transfer a certificate pending  
15 before the utility commission or if the utility is delinquent in  
16 paying the assessment and any applicable penalties or interest  
17 required by Section 5.701(n) ~~[of this code]~~.

18 (d-1) After written notice to the utility, a local  
19 regulatory authority may suspend the effective date of a rate  
20 change for not more than 90 days from the proposed effective date,  
21 except that the suspension shall be extended by two days for each  
22 day a hearing exceeds 15 days. If the local regulatory authority  
23 does not make a final determination on the proposed rate before the  
24 expiration of the applicable suspension period, the proposed rate  
25 shall be considered approved. The approval is subject to the local  
26 regulatory authority's continuation of a hearing in progress.

27 (e) After written notice to the utility, the utility

1 commission may suspend the effective date of a rate change for not  
2 more than 150 days from the proposed effective date, except that the  
3 suspension shall be extended by two days for each day a hearing  
4 exceeds 15 days. If the utility commission does not make a final  
5 determination on the proposed rate before the expiration of the  
6 applicable suspension period, the proposed rate shall be considered  
7 approved. The approval is subject to the utility commission's  
8 continuation of a hearing in progress [If, before the 91st day after  
9 the effective date of the rate change, the regulatory authority  
10 receives a complaint from any affected municipality, or from the  
11 lesser of 1,000 or 10 percent of the ratepayers of the utility over  
12 whose rates the regulatory authority has original jurisdiction, the  
13 regulatory authority shall set the matter for hearing].

14 (f) The regulatory authority shall, not later than the 30th  
15 day after the effective date of the change, begin a hearing to  
16 determine the propriety of the change [may set the matter for  
17 hearing on its own motion at any time within 120 days after the  
18 effective date of the rate change]. If the regulatory authority is  
19 the utility commission, the utility commission may refer the matter  
20 to the State Office of Administrative Hearings as provided by  
21 utility commission rules. [If more than half of the ratepayers of  
22 the utility receive service in a county with a population of more  
23 than 3.3 million, the hearing must be held at a location in that  
24 county.]

25 (g) A local regulatory authority [The] hearing described by  
26 this section may be informal.

27 (g-1) The regulatory authority shall give reasonable notice

1 of the hearing, including notice to the governing body of each  
2 affected municipality and county. The utility is not required to  
3 provide a formal answer or file any other formal pleading in  
4 response to the notice, and the absence of an answer does not affect  
5 an order for a hearing.

6 (h) If, after hearing, the regulatory authority finds the  
7 rates currently being charged or those proposed to be charged are  
8 unreasonable or in violation of law, the regulatory authority shall  
9 determine the rates to be charged by the utility and shall fix the  
10 rates by order served on the utility.

11 (i) A utility may put a changed rate into effect throughout  
12 the area in which the utility sought to change its rates, including  
13 an area over which the utility commission is exercising appellate  
14 or original jurisdiction, by filing a bond with the utility  
15 commission if:

16 (1) the suspension period has been extended under  
17 Subsection (d-1) and the local regulatory authority fails to make a  
18 final determination before the 91st day after the date the rate  
19 change would otherwise be effective; or

20 (2) the suspension period has been extended under  
21 Subsection (e) and the utility commission fails to make a final  
22 determination before the 151st day after the date the rate change  
23 would otherwise be effective.

24 (j) The bonded rate may not exceed the proposed rate. The  
25 bond must be payable to the utility commission in an amount, in a  
26 form, and with a surety approved by the utility commission and  
27 conditioned on refund [The regulatory authority, pending final

1 ~~action in a rate proceeding, may order the utility to deposit all or~~  
2 ~~part of the rate increase received or to be received into an escrow~~  
3 ~~account with a financial institution approved by the regulatory~~  
4 ~~authority].~~

5 (k) Unless otherwise agreed to by the parties to the rate  
6 proceeding, the utility shall refund or credit against future  
7 bills:

8 (1) ~~all sums collected under the bonded rates [during~~  
9 ~~the pendency of the rate proceeding]~~ in excess of the rate finally  
10 ordered; and

11 (2) ~~[plus] interest on those sums at the current~~  
12 ~~interest rate as determined by the regulatory authority.~~

13 [(j) ~~For good cause shown, the regulatory authority may~~  
14 ~~authorize the release of funds to the utility from the escrow~~  
15 ~~account during the pendency of the proceeding.~~

16 [(k) ~~If the regulatory authority receives at least the~~  
17 ~~number of complaints from ratepayers required for the regulatory~~  
18 ~~authority to set a hearing under Subsection (e), the regulatory~~  
19 ~~authority may, pending the hearing and a decision, suspend the date~~  
20 ~~the rate change would otherwise be effective. Except as provided by~~  
21 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~  
22 ~~than:~~

23 [(1) ~~90 days by a local regulatory authority; or~~  
24 [(2) ~~150 days by the commission.]~~

25 (1) At any time during the pendency of the rate proceeding  
26 the regulatory authority may fix interim rates to remain in effect  
27 ~~during the applicable suspension period under Subsection (d-1) or~~

1       (e) or until a final determination is made on the proposed rate. If  
2       the regulatory authority does not establish interim rates, the  
3       rates in effect when the application described by Subsection (c)  
4       was filed continue in effect during the suspension period.

5               (m) If the regulatory authority sets a final rate that is  
6       higher than the interim rate, the utility shall be allowed to  
7       collect the difference between the interim rate and final rate  
8       unless otherwise agreed to by the parties to the rate proceeding.

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

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

20               (p) Except to implement a rate adjustment provision  
21       approved by the regulatory authority by rule or ordinance, as  
22       applicable, or to adjust the rates of a newly acquired utility  
23       system, a utility or two or more utilities under common control and  
24       ownership may not file a statement of intent to increase its rates  
25       more than once in a 12-month period, unless the regulatory  
26       authority determines that a financial hardship exists. If the  
27       regulatory authority requires the utility to deliver a corrected

1 statement of intent, the utility is not considered to be in  
2 violation of the 12-month filing requirement.

3 SECTION 38. Subchapter F, Chapter 13, Water Code, is  
4 amended by adding Sections 13.1871 and 13.1872 to read as follows:

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

9 (b) A utility may not make changes in its rates except by  
10 delivering a statement of intent to each ratepayer and with the  
11 regulatory authority having original jurisdiction at least 35 days  
12 before the effective date of the proposed change. The effective  
13 date of the new rates must be the first day of a billing period, and  
14 the new rates may not apply to service received before the effective  
15 date of the new rates. The statement of intent must include:

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

18 (2) a billing comparison regarding the existing water  
19 rate and the new water rate computed for the use of:

20 (A) 10,000 gallons of water; and

21 (B) 30,000 gallons of water;

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

25 (4) a description of the process by which a ratepayer  
26 may file a complaint under Subsection (h).

27 (c) The utility shall mail, send by e-mail, or deliver a

1 copy of the statement of intent to the appropriate offices of each  
2 affected municipality and to any other affected persons as required  
3 by the regulatory authority's rules.

4       (d) When the statement of intent is delivered, the utility  
5 shall file with the regulatory authority an application to change  
6 rates. The application must include information the regulatory  
7 authority requires by rule and any appropriate cost and rate  
8 schedules supporting the requested rate increase. In adopting  
9 rules relating to the information required in the application, the  
10 utility commission shall ensure that a utility can file a less  
11 burdensome and complex application than is required of a Class A  
12 utility. If the utility fails to provide within a reasonable time  
13 after the application is filed the necessary documentation or other  
14 evidence that supports the costs and expenses that are shown in the  
15 application, the regulatory authority may disallow the  
16 nonsupported costs or expenses.

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

1 and any applicable penalties or interest required by Section  
2 5.701(n).

3 (f) After written notice to the utility, a local regulatory  
4 authority may suspend the effective date of a rate change for not  
5 more than 90 days from the proposed effective date, except that the  
6 suspension shall be extended by two days for each day a hearing  
7 exceeds 15 days. If the local regulatory authority does not make a  
8 final determination on the proposed rate before the expiration of  
9 the applicable suspension period, the proposed rate shall be  
10 considered approved. The approval is subject to the local  
11 regulatory authority's continuation of a hearing in progress.

12 (g) After written notice to the utility, the utility  
13 commission may suspend the effective date of a rate change for not  
14 more than 205 days from the proposed effective date, except that the  
15 suspension shall be extended by two days for each day a hearing  
16 exceeds 15 days. If the utility commission does not make a final  
17 determination on the proposed rate before the expiration of the  
18 applicable suspension period, the proposed rate shall be considered  
19 approved. The approval is subject to the utility commission's  
20 continuation of a hearing in progress.

21 (h) If, before the 91st day after the effective date of the  
22 rate change, the regulatory authority receives a complaint from any  
23 affected municipality, or from the lesser of 1,000 or 10 percent of  
24 the ratepayers of the utility over whose rates the regulatory  
25 authority has original jurisdiction, the regulatory authority  
26 shall set the matter for hearing.

27 (i) If the regulatory authority receives at least the number

1 of complaints from ratepayers required for the regulatory authority  
2 to set a hearing under Subsection (h), the regulatory authority  
3 may, pending the hearing and a decision, suspend the date the rate  
4 change would otherwise be effective. Except as provided by  
5 Subsection (f) or (g), the proposed rate may not be suspended for  
6 longer than:

7           (1) 90 days by a local regulatory authority; or  
8           (2) 205 days by the utility commission.

9           (j) The regulatory authority may set the matter for hearing  
10 on its own motion at any time within 120 days after the effective  
11 date of the rate change.

12           (k) The hearing may be informal.

13           (l) The regulatory authority shall give reasonable notice  
14 of the hearing, including notice to the governing body of each  
15 affected municipality and county. The utility is not required to  
16 provide a formal answer or file any other formal pleading in  
17 response to the notice, and the absence of an answer does not affect  
18 an order for a hearing.

19           (m) The utility shall mail notice of the hearing to each  
20 ratepayer before the hearing. The notice must include a  
21 description of the process by which a ratepayer may intervene in the  
22 ratemaking proceeding.

23           (n) If, after hearing, the regulatory authority finds the  
24 rates currently being charged or those proposed to be charged are  
25 unreasonable or in violation of law, the regulatory authority shall  
26 determine the rates to be charged by the utility and shall fix the  
27 rates by order served on the utility.

1           (o) A utility may put a changed rate into effect throughout  
2 the area in which the utility sought to change its rates, including  
3 an area over which the utility commission is exercising appellate  
4 or original jurisdiction, by filing a bond with the utility  
5 commission if:

6           (1) the suspension period has been extended under  
7 Subsection (f) and the local regulatory authority fails to make a  
8 final determination before the 91st day after the date the rate  
9 change would otherwise be effective; or

10           (2) the suspension period has been extended under  
11 Subsection (g) and the utility commission fails to make a final  
12 determination before the 206th day after the date the rate change  
13 would otherwise be effective.

14           (p) The bonded rate may not exceed the proposed rate. The  
15 bond must be payable to the utility commission in an amount, in a  
16 form, and with a surety approved by the utility commission and  
17 conditioned on refund.

18           (q) Unless otherwise agreed to by the parties to the rate  
19 proceeding, the utility shall refund or credit against future  
20 bills:

21           (1) all sums collected under the bonded rates in  
22 excess of the rate finally ordered; and

23           (2) interest on those sums at the current interest  
24 rate as determined by the regulatory authority.

25           (r) At any time during the pendency of the rate proceeding  
26 the regulatory authority may fix interim rates to remain in effect  
27 during the applicable suspension period under Subsection (f) or (g)

1 or until a final determination is made on the proposed rate. If the  
2 regulatory authority does not establish interim rates, the rates in  
3 effect when the application described by Subsection (e) was filed  
4 continue in effect during the suspension period.

5       (s) If the regulatory authority sets a final rate that is  
6 higher than the interim rate, the utility shall be allowed to  
7 collect the difference between the interim rate and final rate  
8 unless otherwise agreed to by the parties to the rate proceeding.

9       (t) For good cause shown, the regulatory authority may at  
10 any time during the proceeding require the utility to refund money  
11 collected under a proposed rate before the rate was suspended or an  
12 interim rate was established to the extent the proposed rate  
13 exceeds the existing rate or the interim rate.

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

20       (v) Except to implement a rate adjustment provision  
21 approved by the regulatory authority by rule or ordinance, as  
22 applicable, or to adjust the rates of a newly acquired utility  
23 system, a utility or two or more utilities under common control and  
24 ownership may not file a statement of intent to increase its rates  
25 more than once in a 12-month period, unless the regulatory  
26 authority determines that a financial hardship exists. If the  
27 regulatory authority requires the utility to deliver a corrected

1 statement of intent, the utility is not considered to be in  
2 violation of the 12-month filing requirement.

3 Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT. (a) This  
4 section applies only to a Class C utility.

5 (b) For purposes of this section, "price index" means an  
6 appropriate price index designated annually by the utility  
7 commission for the purposes of this section.

8 (c) A utility may not make changes in its rates except by:

9 (1) filing an application for a rate adjustment under  
10 the procedures described by Subsection (e) and delivering a notice  
11 to each ratepayer describing the proposed rate adjustment at least  
12 30 days before the effective date of the proposed change; or

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

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

19 (e) The utility commission by rule shall adopt procedures to  
20 allow a utility to receive without a hearing an annual rate  
21 adjustment based on changes in the price index. The rules must:

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

25 (2) provide that an annual rate adjustment described  
26 by this section may not result in a rate increase to any class or  
27 category of ratepayer of more than the lesser of:

6           (f) A utility may adjust the utility's rates using the  
7 procedures adopted under Subsection (e) not more than once each  
8 year and not more than four times between rate proceedings  
9 described by Section 13.1871.

10 SECTION 39. Sections 13.188(a) and (c), Water Code, are  
11 amended to read as follows:

22 (c) A proceeding under this section is not a rate case and  
23 Sections [Section] 13.187, 13.1871, and 13.1872 do [does] not  
24 apply.

25 SECTION 40. Sections 13.241(a), (d), and (e), Water Code,  
26 are amended to read as follows:

27 (a) In determining whether to grant or amend a certificate

1 of public convenience and necessity, the utility commission shall  
2 ensure that the applicant possesses the financial, managerial, and  
3 technical capability to provide continuous and adequate service.

4 (d) Before the utility commission grants a new certificate  
5 of convenience and necessity for an area which would require  
6 construction of a physically separate water or sewer system, the  
7 applicant must demonstrate to the utility commission that  
8 regionalization or consolidation with another retail public  
9 utility is not economically feasible.

10 (e) The utility commission by rule shall develop a  
11 standardized method for determining under Section 13.246(f) which  
12 of two or more retail public utilities or water supply or sewer  
13 service corporations that apply for a certificate of public  
14 convenience and necessity to provide water or sewer utility service  
15 to an uncertificated area located in an economically distressed  
16 area is more capable financially, managerially, and technically of  
17 providing continuous and adequate service. In this subsection,  
18 "economically distressed area" has the meaning assigned by Section  
19 15.001.

20 SECTION 41. Sections 13.242(a) and (c), Water Code, are  
21 amended to read as follows:

22 (a) Unless otherwise specified, a utility, a utility  
23 operated by an affected county, or a water supply or sewer service  
24 corporation may not in any way render retail water or sewer utility  
25 service directly or indirectly to the public without first having  
26 obtained from the utility commission a certificate that the present  
27 or future public convenience and necessity will require that

1 installation, operation, or extension, and except as otherwise  
2 provided by this subchapter, a retail public utility may not  
3 furnish, make available, render, or extend retail water or sewer  
4 utility service to any area to which retail water or sewer utility  
5 service is being lawfully furnished by another retail public  
6 utility without first having obtained a certificate of public  
7 convenience and necessity that includes the area in which the  
8 consuming facility is located.

9                   (c) The utility commission may by rule allow a municipality  
10 or utility or water supply corporation to render retail water  
11 service without a certificate of public convenience and necessity  
12 if the municipality has given notice under Section 13.255 [~~of this~~  
13 ~~code~~] that it intends to provide retail water service to an area or  
14 if the utility or water supply corporation has less than 15  
15 potential connections and is not within the certificated area of  
16 another retail public utility.

17                   SECTION 42. Section 13.244, Water Code, is amended to read  
18 as follows:

19                   Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;  
20 EVIDENCE AND CONSENT. (a) To obtain a certificate of public  
21 convenience and necessity or an amendment to a certificate, a  
22 public utility or water supply or sewer service corporation shall  
23 submit to the utility commission an application for a certificate  
24 or for an amendment as provided by this section.

25                   (b) Each public utility and water supply or sewer service  
26 corporation shall file with the utility commission a map or maps  
27 showing all its facilities and illustrating separately facilities

1 for production, transmission, and distribution of its services, and  
2 each certificated retail public utility shall file with the utility  
3 commission a map or maps showing any facilities, customers, or area  
4 currently being served outside its certificated areas.

5 (c) Each applicant for a certificate or for an amendment  
6 shall file with the utility commission evidence required by the  
7 utility commission to show that the applicant has received the  
8 required consent, franchise, or permit of the proper municipality  
9 or other public authority.

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

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

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

16 (B) the Texas State Plane Coordinate System;

17 (C) verifiable landmarks, including a road,  
18 creek, or railroad line; or

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

21 (2) a description of any requests for service in the  
22 proposed service area;

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

26 (4) a description of the sources of funding for all  
27 facilities;

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

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

7 (A) at least 50 acres; and

8 (B) wholly or partially located within the  
9 proposed service area; and

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

11 SECTION 43. Sections 13.245(b), (c), (c-1), (c-2), (c-3),  
12 and (e), Water Code, are amended to read as follows:

22 (c) If a municipality has not consented under Subsection (b)  
23 before the 180th day after the date the municipality receives the  
24 retail public utility's application, the utility commission shall  
25 grant the certificate of public convenience and necessity without  
26 the consent of the municipality if the utility commission finds  
27 that the municipality:

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4 (c-1) If a municipality has not consented under Subsection  
5 (b) before the 180th day after the date a landowner or a retail  
6 public utility submits to the municipality a formal request for  
7 service according to the municipality's application requirements  
8 and standards for facilities on the same or substantially similar  
9 terms as provided by the retail public utility's application to the  
10 utility commission, including a capital improvements plan required  
11 by Section 13.244(d)(3) or a subdivision plat, the utility  
12 commission may grant the certificate of public convenience and  
13 necessity without the consent of the municipality if:

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

16 (2) the municipality has not entered into a binding  
17 commitment to serve the area that is the subject of the retail  
18 public utility's application to the utility commission before the  
19 180th day after the date the formal request was made; and

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

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

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

26 (c-2) If a municipality refuses to provide service in the  
27 proposed service area, as evidenced by a formal vote of the

1 municipality's governing body or an official notification from the  
2 municipality, the utility commission is not required to make the  
3 findings otherwise required by this section and may grant the  
4 certificate of public convenience and necessity to the retail  
5 public utility at any time after the date of the formal vote or  
6 receipt of the official notification.

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

12 (e) If the utility commission makes a decision under  
13 Subsection (d) regarding the grant of a certificate of public  
14 convenience and necessity without the consent of the municipality,  
15 the municipality or the retail public utility may appeal the  
16 decision to the appropriate state district court. The court shall  
17 hear the petition within 120 days after the date the petition is  
18 filed. On final disposition, the court may award reasonable fees to  
19 the prevailing party.

20 SECTION 44. Sections 13.2451(b) and (c), Water Code, are  
21 amended to read as follows:

22 (b) The utility commission may not extend a municipality's  
23 certificate of public convenience and necessity beyond its  
24 extraterritorial jurisdiction if an owner of land that is located  
25 wholly or partly outside the extraterritorial jurisdiction elects  
26 to exclude some or all of the landowner's property within a proposed  
27 service area in accordance with Section 13.246(h). This subsection

1 does not apply to a transfer of a certificate as approved by the  
2 utility commission.

3 (c) The utility commission, after notice to the  
4 municipality and an opportunity for a hearing, may decertify an  
5 area outside a municipality's extraterritorial jurisdiction if the  
6 municipality does not provide service to the area on or before the  
7 fifth anniversary of the date the certificate of public convenience  
8 and necessity was granted for the area. This subsection does not  
9 apply to a certificate of public convenience and necessity for an  
10 area:

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

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

15 SECTION 45. Section 13.246, Water Code, is amended to read  
16 as follows:

17 Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL;  
18 FACTORS CONSIDERED. (a) If an application for a certificate of  
19 public convenience and necessity or for an amendment to a  
20 certificate is filed, the utility commission shall cause notice of  
21 the application to be given to affected parties and to each county  
22 and groundwater conservation district that is wholly or partly  
23 included in the area proposed to be certified. If requested, the  
24 utility commission shall fix a time and place for a hearing and give  
25 notice of the hearing. Any person affected by the application may  
26 intervene at the hearing.

27 (a-1) Except as otherwise provided by this subsection, in

1 addition to the notice required by Subsection (a), the utility  
2 commission shall require notice to be mailed to each owner of a  
3 tract of land that is at least 25 acres and is wholly or partially  
4 included in the area proposed to be certified. Notice required  
5 under this subsection must be mailed by first class mail to the  
6 owner of the tract according to the most current tax appraisal rolls  
7 of the applicable central appraisal district at the time the  
8 utility commission received the application for the certificate or  
9 amendment. Good faith efforts to comply with the requirements of  
10 this subsection shall be considered adequate notice to landowners.  
11 Notice under this subsection is not required for a matter filed with  
12 the utility commission or the commission under:

13 (1) Section 13.248 or 13.255; or  
14 (2) Chapter 65.

15 (b) The utility commission may grant applications and issue  
16 certificates and amendments to certificates only if the utility  
17 commission finds that a certificate or amendment is necessary for  
18 the service, accommodation, convenience, or safety of the public.  
19 The utility commission may issue a certificate or amendment as  
20 requested, or refuse to issue it, or issue it for the construction  
21 of only a portion of the contemplated system or facility or  
22 extension, or for the partial exercise only of the right or  
23 privilege and may impose special conditions necessary to ensure  
24 that continuous and adequate service is provided.

25 (c) Certificates of public convenience and necessity and  
26 amendments to certificates shall be granted by the utility  
27 commission on a nondiscriminatory basis after consideration by the

1       utility commission of:

2               (1) the adequacy of service currently provided to the  
3 requested area;

4               (2) the need for additional service in the requested  
5 area, including whether any landowners, prospective landowners,  
6 tenants, or residents have requested service;

7               (3) the effect of the granting of a certificate or of  
8 an amendment on the recipient of the certificate or amendment, on  
9 the landowners in the area, and on any retail public utility of the  
10 same kind already serving the proximate area;

11              (4) the ability of the applicant to provide adequate  
12 service, including meeting the standards of the commission, taking  
13 into consideration the current and projected density and land use  
14 of the area;

15              (5) the feasibility of obtaining service from an  
16 adjacent retail public utility;

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

21              (7) environmental integrity;

22              (8) the probable improvement of service or lowering of  
23 cost to consumers in that area resulting from the granting of the  
24 certificate or amendment; and

25              (9) the effect on the land to be included in the  
26 certificated area.

27              (d) The utility commission may require an applicant for a

1 certificate or for an amendment to provide a bond or other financial  
2 assurance in a form and amount specified by the utility commission  
3 to ensure that continuous and adequate utility service is provided.

4 (e) Where applicable, in addition to the other factors in  
5 this section the utility commission shall consider the efforts of  
6 the applicant:

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

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

11 (f) If two or more retail public utilities or water supply  
12 or sewer service corporations apply for a certificate of public  
13 convenience and necessity to provide water or sewer utility service  
14 to an uncertificated area located in an economically distressed  
15 area and otherwise meet the requirements for obtaining a new  
16 certificate, the utility commission shall grant the certificate to  
17 the retail public utility or water supply or sewer service  
18 corporation that is more capable financially, managerially, and  
19 technically of providing continuous and adequate service.

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

22 (h) Except as provided by Subsection (i), a landowner who  
23 owns a tract of land that is at least 25 acres and that is wholly or  
24 partially located within the proposed service area may elect to  
25 exclude some or all of the landowner's property from the proposed  
26 service area by providing written notice to the utility commission  
27 before the 30th day after the date the landowner receives notice of

1 a new application for a certificate of public convenience and  
2 necessity or for an amendment to an existing certificate of public  
3 convenience and necessity. The landowner's election is effective  
4 without a further hearing or other process by the utility  
5 commission. If a landowner makes an election under this  
6 subsection, the application shall be modified so that the electing  
7 landowner's property is not included in the proposed service area.  
8 An applicant for a certificate of public convenience and necessity  
9 that has land removed from its proposed certificated service area  
10 because of a landowner's election under this subsection may not be  
11 required to provide service to the removed land for any reason,  
12 including the violation of law or utility commission or commission  
13 rules by the water or sewer system of another person.

14 (i) A landowner is not entitled to make an election under  
15 Subsection (h) but is entitled to contest the inclusion of the  
16 landowner's property in the proposed service area at a hearing held  
17 by the utility commission regarding the application if the proposed  
18 service area is located within the boundaries or extraterritorial  
19 jurisdiction of a municipality with a population of more than  
20 500,000 and the municipality or a utility owned by the municipality  
21 is the applicant.

22 SECTION 46. Section 13.247(a), Water Code, is amended to  
23 read as follows:

24 (a) If an area is within the boundaries of a municipality,  
25 all retail public utilities certified or entitled to certification  
26 under this chapter to provide service or operate facilities in that  
27 area may continue and extend service in its area of public

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1 convenience and necessity within the area pursuant to the rights  
2 granted by its certificate and this chapter, unless the  
3 municipality exercises its power of eminent domain to acquire the  
4 property of the retail public utility under Subsection (d). Except  
5 as provided by Section 13.255, a municipally owned or operated  
6 utility may not provide retail water and sewer utility service  
7 within the area certificated to another retail public utility  
8 without first having obtained from the utility commission a  
9 certificate of public convenience and necessity that includes the  
10 areas to be served.

11 SECTION 47. Section 13.248, Water Code, is amended to read  
12 as follows:

13 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts  
14 between retail public utilities designating areas to be served and  
15 customers to be served by those retail public utilities, when  
16 approved by the utility commission after public notice and hearing,  
17 are valid and enforceable and are incorporated into the appropriate  
18 areas of public convenience and necessity.

19 SECTION 48. Sections 13.250(b), (c), and (e), Water Code,  
20 are amended to read as follows:

21 (b) Unless the utility commission issues a certificate that  
22 neither the present nor future convenience and necessity will be  
23 adversely affected, the holder of a certificate or a person who  
24 possesses facilities used to provide utility service shall not  
25 discontinue, reduce, or impair service to a certified service area  
26 or part of a certified service area except for:

27 (1) nonpayment of charges for services provided by the

1 certificate holder or a person who possesses facilities used to  
2 provide utility service;

3 (2) nonpayment of charges for sewer service provided  
4 by another retail public utility under an agreement between the  
5 retail public utility and the certificate holder or a person who  
6 possesses facilities used to provide utility service or under a  
7 utility commission-ordered arrangement between the two service  
8 providers;

9 (3) nonuse; or

10 (4) other similar reasons in the usual course of  
11 business.

12 (c) Any discontinuance, reduction, or impairment of  
13 service, whether with or without approval of the utility  
14 commission, shall be in conformity with and subject to conditions,  
15 restrictions, and limitations that the utility commission  
16 prescribes.

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

20 SECTION 49. Section 13.2502(d), Water Code, is amended to  
21 read as follows:

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

24 SECTION 50. Section 13.251, Water Code, is amended to read  
25 as follows:

26 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.  
27 Except as provided by Section 13.255 [~~of this code~~], a utility or a

1 water supply or sewer service corporation may not sell, assign, or  
2 lease a certificate of public convenience and necessity or any  
3 right obtained under a certificate unless the commission has  
4 determined that the purchaser, assignee, or lessee is capable of  
5 rendering adequate and continuous service to every consumer within  
6 the certified area, after considering the factors under Section  
7 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be  
8 on the conditions prescribed by the utility commission.

9 SECTION 51. Section 13.252, Water Code, is amended to read  
10 as follows:

11 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.  
12 If a retail public utility in constructing or extending a line,  
13 plant, or system interferes or attempts to interfere with the  
14 operation of a line, plant, or system of any other retail public  
15 utility, or furnishes, makes available, renders, or extends retail  
16 water or sewer utility service to any portion of the service area of  
17 another retail public utility that has been granted or is not  
18 required to possess a certificate of public convenience and  
19 necessity, the utility commission may issue an order prohibiting  
20 the construction, extension, or provision of service or prescribing  
21 terms and conditions for locating the line, plant, or system  
22 affected or for the provision of the service.

23 SECTION 52. Section 13.253, Water Code, is amended to read  
24 as follows:

25 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING  
26 SERVICE. (a) After notice and hearing, the utility commission or  
27 the commission may:

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

11 (B) develop, implement, and follow financial,  
12 managerial, and technical practices that are acceptable to the  
13 utility commission to ensure that continuous and adequate service  
14 is provided to any areas currently certificated to the retail  
15 public utility if the retail public utility has not provided  
16 continuous and adequate service to any of those areas and, for a  
17 utility, to provide financial assurance of the utility's ability to  
18 operate the system in accordance with applicable laws and rules, in  
19 the form of a bond or other financial assurance in a form and amount  
20 specified by the utility commission:

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

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

1 obligation to provide continuous and adequate service on at least a  
2 wholesale basis from another consenting utility service provider;  
3 or

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

6 (b) If the utility commission has reason to believe that  
7 improvements and repairs to a water or sewer service system are  
8 necessary to enable a retail public utility to provide continuous  
9 and adequate service in any portion of its service area and the  
10 retail public utility has provided financial assurance under  
11 Section 341.0355, Health and Safety Code, or under this chapter,  
12 the utility commission, after providing to the retail public  
13 utility notice and an opportunity to be heard by the commissioners  
14 at a [~~commission~~] meeting of the utility commission, may  
15 immediately order specified improvements and repairs to the water  
16 or sewer system, the costs of which may be paid by the bond or other  
17 financial assurance in an amount determined by the utility  
18 commission not to exceed the amount of the bond or financial  
19 assurance. The order requiring the improvements may be an  
20 emergency order if it is issued after the retail public utility has  
21 had an opportunity to be heard [~~by the commissioners~~] at a  
22 [~~commission~~] meeting of the utility commission. After notice and  
23 hearing, the utility commission may require a retail public utility  
24 to obligate additional money to replace the financial assurance  
25 used for the improvements.

26 SECTION 53. Sections 13.254(a), (a-1), (a-2), (a-3), (a-4),  
27 (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Water

1 Code, are amended to read as follows:

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

6 (1) the certificate holder has never provided, is no  
7 longer providing, is incapable of providing, or has failed to  
8 provide continuous and adequate service in the area, or part of the  
9 area, covered by the certificate;

10 (2) in an affected county as defined in Section  
11 16.341, the cost of providing service by the certificate holder is  
12 so prohibitively expensive as to constitute denial of service,  
13 provided that, for commercial developments or for residential  
14 developments started after September 1, 1997, in an affected county  
15 as defined in Section 16.341, the fact that the cost of obtaining  
16 service from the currently certificated retail public utility makes  
17 the development economically unfeasible does not render such cost  
18 prohibitively expensive in the absence of other relevant factors;

19 (3) the certificate holder has agreed in writing to  
20 allow another retail public utility to provide service within its  
21 service area, except for an interim period, without amending its  
22 certificate; or

23 (4) the certificate holder has failed to file a cease  
24 and desist action pursuant to Section 13.252 within 180 days of the  
25 date that it became aware that another retail public utility was  
26 providing service within its service area, unless the certificate  
27 holder demonstrates good cause for its failure to file such action

1 within the 180 days.

2 (a-1) As an alternative to decertification under Subsection  
3 (a), the owner of a tract of land that is at least 50 acres and that  
4 is not in a platted subdivision actually receiving water or sewer  
5 service may petition the utility commission under this subsection  
6 for expedited release of the area from a certificate of public  
7 convenience and necessity so that the area may receive service from  
8 another retail public utility. The fact that a certificate holder  
9 is a borrower under a federal loan program is not a bar to a request  
10 under this subsection for the release of the petitioner's land and  
11 the receipt of services from an alternative provider. On the day  
12 the petitioner submits the petition to the utility commission, the  
13 petitioner shall send, via certified mail, a copy of the petition to  
14 the certificate holder, who may submit information to the utility  
15 commission to controvert information submitted by the petitioner.

16 The petitioner must demonstrate that:

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

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

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

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

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

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

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

7 (2) the certificate holder has been allowed at least  
8 90 calendar days to review and respond to the written request and  
9 the information it contains;

10 (3) the certificate holder:

11 (A) has refused to provide the service;

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

18 (C) conditions the provision of service on the  
19 payment of costs not properly allocable directly to the  
20 petitioner's service request, as determined by the utility  
21 commission; and

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

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

6                   (1) within the boundaries of any municipality or the  
7 extraterritorial jurisdiction of a municipality with a population  
8 of more than 500,000 and the municipality or retail public utility  
9 owned by the municipality is the holder of the certificate; or

10                  (2) in a platted subdivision actually receiving water  
11 or sewer service.

12                  (a-3) Within 60 calendar days from the date the utility  
13 commission determines the petition filed pursuant to Subsection  
14 (a-1) to be administratively complete, the utility commission shall  
15 grant the petition unless the utility commission makes an express  
16 finding that the petitioner failed to satisfy the elements required  
17 in Subsection (a-1) and supports its finding with separate findings  
18 and conclusions for each element based solely on the information  
19 provided by the petitioner and the certificate holder. The utility  
20 commission may grant or deny a petition subject to terms and  
21 conditions specifically related to the service request of the  
22 petitioner and all relevant information submitted by the petitioner  
23 and the certificate holder. In addition, the utility commission  
24 may require an award of compensation as otherwise provided by this  
25 section.

26                  (a-4) Chapter 2001, Government Code, does not apply to any  
27 petition filed under Subsection (a-1). The decision of the utility

1 commission on the petition is final after any reconsideration  
2 authorized by the utility commission's rules and may not be  
3 appealed.

4 (a-6) The utility commission shall grant a petition  
5 received under Subsection (a-5) not later than the 60th day after  
6 the date the landowner files the petition. The utility commission  
7 may not deny a petition received under Subsection (a-5) based on the  
8 fact that a certificate holder is a borrower under a federal loan  
9 program. The utility commission may require an award of  
10 compensation by the petitioner to a decertified retail public  
11 utility that is the subject of a petition filed under Subsection  
12 (a-5) as otherwise provided by this section.

13 (a-8) If a certificate holder has never made service  
14 available through planning, design, construction of facilities, or  
15 contractual obligations to serve the area a petitioner seeks to  
16 have released under Subsection (a-1), the utility commission is not  
17 required to find that the proposed alternative provider is capable  
18 of providing better service than the certificate holder, but only  
19 that the proposed alternative provider is capable of providing the  
20 requested service.

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

26 (c) If the certificate of any retail public utility is  
27 revoked or amended, the utility commission may require one or more

1 retail public utilities with their consent to provide service in  
2 the area in question. The order of the utility commission shall not  
3 be effective to transfer property.

4 (d) A retail public utility may not in any way render retail  
5 water or sewer service directly or indirectly to the public in an  
6 area that has been decertified under this section without providing  
7 compensation for any property that the utility commission  
8 determines is rendered useless or valueless to the decertified  
9 retail public utility as a result of the decertification.

10 (e) The determination of the monetary amount of  
11 compensation, if any, shall be determined at the time another  
12 retail public utility seeks to provide service in the previously  
13 decertified area and before service is actually provided. The  
14 utility commission shall ensure that the monetary amount of  
15 compensation is determined not later than the 90th calendar day  
16 after the date on which a retail public utility notifies the utility  
17 commission of its intent to provide service to the decertified  
18 area.

19 (f) The monetary amount shall be determined by a qualified  
20 individual or firm serving as independent appraiser agreed upon by  
21 the decertified retail public utility and the retail public utility  
22 seeking to serve the area. The determination of compensation by the  
23 independent appraiser shall be binding on the utility commission.  
24 The costs of the independent appraiser shall be borne by the retail  
25 public utility seeking to serve the area.

26 (g) For the purpose of implementing this section, the value  
27 of real property owned and utilized by the retail public utility for

1 its facilities shall be determined according to the standards set  
2 forth in Chapter 21, Property Code, governing actions in eminent  
3 domain and the value of personal property shall be determined  
4 according to the factors in this subsection. The factors ensuring  
5 that the compensation to a retail public utility is just and  
6 adequate shall include: the amount of the retail public utility's  
7 debt allocable for service to the area in question; the value of the  
8 service facilities of the retail public utility located within the  
9 area in question; the amount of any expenditures for planning,  
10 design, or construction of service facilities that are allocable to  
11 service to the area in question; the amount of the retail public  
12 utility's contractual obligations allocable to the area in  
13 question; any demonstrated impairment of service or increase of  
14 cost to consumers of the retail public utility remaining after the  
15 decertification; the impact on future revenues lost from existing  
16 customers; necessary and reasonable legal expenses and  
17 professional fees; and other relevant factors. The utility  
18 commission shall adopt rules governing the evaluation of these  
19 factors.

20 (g-1) If the retail public utilities cannot agree on an  
21 independent appraiser within 10 calendar days after the date on  
22 which the retail public utility notifies the utility commission of  
23 its intent to provide service to the decertified area, each retail  
24 public utility shall engage its own appraiser at its own expense,  
25 and each appraisal shall be submitted to the utility commission  
26 within 60 calendar days. After receiving the appraisals, the  
27 utility commission shall appoint a third appraiser who shall make a

1 determination of the compensation within 30 days. The  
2 determination may not be less than the lower appraisal or more than  
3 the higher appraisal. Each retail public utility shall pay half the  
4 cost of the third appraisal.

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

11 SECTION 54. Sections 13.255(a), (b), (c), (d), (e), (g-1),  
12 (k), (l), and (m), Water Code, are amended to read as follows:

13 (a) In the event that an area is incorporated or annexed by a  
14 municipality, either before or after the effective date of this  
15 section, the municipality and a retail public utility that provides  
16 water or sewer service to all or part of the area pursuant to a  
17 certificate of convenience and necessity may agree in writing that  
18 all or part of the area may be served by a municipally owned  
19 utility, by a franchised utility, or by the retail public utility.  
20 In this section, the phrase "franchised utility" shall mean a  
21 retail public utility that has been granted a franchise by a  
22 municipality to provide water or sewer service inside municipal  
23 boundaries. The agreement may provide for single or dual  
24 certification of all or part of the area, for the purchase of  
25 facilities or property, and for such other or additional terms that  
26 the parties may agree on. If a franchised utility is to serve the  
27 area, the franchised utility shall also be a party to the agreement.

1 The executed agreement shall be filed with the utility commission,  
2 and the utility commission, on receipt of the agreement, shall  
3 incorporate the terms of the agreement into the respective  
4 certificates of convenience and necessity of the parties to the  
5 agreement.

6 (b) If an agreement is not executed within 180 days after  
7 the municipality, in writing, notifies the retail public utility of  
8 its intent to provide service to the incorporated or annexed area,  
9 and if the municipality desires and intends to provide retail  
10 utility service to the area, the municipality, prior to providing  
11 service to the area, shall file an application with the utility  
12 commission to grant single certification to the municipally owned  
13 water or sewer utility or to a franchised utility. If an  
14 application for single certification is filed, the utility  
15 commission shall fix a time and place for a hearing and give notice  
16 of the hearing to the municipality and franchised utility, if any,  
17 and notice of the application and hearing to the retail public  
18 utility.

19 (c) The utility commission shall grant single certification  
20 to the municipality. The utility commission shall also determine  
21 whether single certification as requested by the municipality would  
22 result in property of a retail public utility being rendered  
23 useless or valueless to the retail public utility, and shall  
24 determine in its order the monetary amount that is adequate and just  
25 to compensate the retail public utility for such property. If the  
26 municipality in its application has requested the transfer of  
27 specified property of the retail public utility to the municipality

1 or to a franchised utility, the utility commission shall also  
2 determine in its order the adequate and just compensation to be paid  
3 for such property pursuant to the provisions of this section,  
4 including an award for damages to property remaining in the  
5 ownership of the retail public utility after single certification.  
6 The order of the utility commission shall not be effective to  
7 transfer property. A transfer of property may only be obtained  
8 under this section by a court judgment rendered pursuant to  
9 Subsection (d) or (e) [of this section]. The grant of single  
10 certification by the utility commission shall go into effect on the  
11 date the municipality or franchised utility, as the case may be,  
12 pays adequate and just compensation pursuant to court order, or  
13 pays an amount into the registry of the court or to the retail  
14 public utility under Subsection (f). If the court judgment  
15 provides that the retail public utility is not entitled to any  
16 compensation, the grant of single certification shall go into  
17 effect when the court judgment becomes final. The municipality or  
18 franchised utility must provide to each customer of the retail  
19 public utility being acquired an individual written notice within  
20 60 days after the effective date for the transfer specified in the  
21 court judgment. The notice must clearly advise the customer of the  
22 identity of the new service provider, the reason for the transfer,  
23 the rates to be charged by the new service provider, and the  
24 effective date of those rates.

25 (d) In the event the final order of the utility commission  
26 is not appealed within 30 days, the municipality may request the  
27 district court of Travis County to enter a judgment consistent with

1 the order of the utility commission. In such event, the court shall  
2 render a judgment that:

3 (1) transfers to the municipally owned utility or  
4 franchised utility title to property to be transferred to the  
5 municipally owned utility or franchised utility as delineated by  
6 the utility commission's final order and property determined by the  
7 utility commission to be rendered useless or valueless by the  
8 granting of single certification; and

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

12 (e) Any party that is aggrieved by a final order of the  
13 utility commission under this section may file an appeal with the  
14 district court of Travis County within 30 days after the order  
15 becomes final. The hearing in such an appeal before the district  
16 court shall be by trial de novo on all issues. After the hearing, if  
17 the court determines that the municipally owned utility or  
18 franchised utility is entitled to single certification under the  
19 provisions of this section, the court shall enter a judgment that:

20 (1) transfers to the municipally owned utility or  
21 franchised utility title to property requested by the municipality  
22 to be transferred to the municipally owned utility or franchised  
23 utility and located within the singly certificated area and  
24 property determined by the court or jury to be rendered useless or  
25 valueless by the granting of single certification; and

26 (2) orders payment in accordance with Subsection (g)  
27 [~~of this section~~] to the retail public utility of adequate and just

1 compensation for the property transferred and for the property  
2 damaged as determined by the court or jury.

3 (g-1) The utility commission shall adopt rules governing  
4 the evaluation of the factors to be considered in determining the  
5 monetary compensation under Subsection (g). The utility commission  
6 by rule shall adopt procedures to ensure that the total  
7 compensation to be paid to a retail public utility under Subsection  
8 (g) is determined not later than the 90th calendar day after the  
9 date on which the utility commission determines that the  
10 municipality's application is administratively complete.

11 (k) The following conditions apply when a municipality or  
12 franchised utility makes an application to acquire the service area  
13 or facilities of a retail public utility described in Subsection  
14 (j)(2):

15 (1) the utility commission or court must determine  
16 that the service provided by the retail public utility is  
17 substandard or its rates are unreasonable in view of the reasonable  
18 expenses of the utility;

19 (2) if the municipality abandons its application, the  
20 court or the utility commission is authorized to award to the retail  
21 public utility its reasonable expenses related to the proceeding  
22 hereunder, including attorney fees; and

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

26 (1) For an area incorporated by a municipality, the  
27 compensation provided under Subsection (g) shall be determined by a

1 qualified individual or firm to serve as independent appraiser, who  
2 shall be selected by the affected retail public utility, and the  
3 costs of the appraiser shall be paid by the municipality. For an  
4 area annexed by a municipality, the compensation provided under  
5 Subsection (g) shall be determined by a qualified individual or  
6 firm to which the municipality and the retail public utility agree  
7 to serve as independent appraiser. If the retail public utility and  
8 the municipality are unable to agree on a single individual or firm  
9 to serve as the independent appraiser before the 11th day after the  
10 date the retail public utility or municipality notifies the other  
11 party of the impasse, the retail public utility and municipality  
12 each shall appoint a qualified individual or firm to serve as  
13 independent appraiser. On or before the 10th business day after the  
14 date of their appointment, the independent appraisers shall meet to  
15 reach an agreed determination of the amount of compensation. If the  
16 appraisers are unable to agree on a determination before the 16th  
17 business day after the date of their first meeting under this  
18 subsection, the retail public utility or municipality may petition  
19 the utility commission or a person the utility commission  
20 designates for the purpose to appoint a third qualified independent  
21 appraiser to reconcile the appraisals of the two originally  
22 appointed appraisers. The determination of the third appraiser may  
23 not be less than the lesser or more than the greater of the two  
24 original appraisals. The costs of the independent appraisers for  
25 an annexed area shall be shared equally by the retail public utility  
26 and the municipality. The determination of compensation under this  
27 subsection is binding on the utility commission.

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5 SECTION 55. Section 13.2551, Water Code, is amended to read  
6 as follows:

7 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a  
8 condition to decertification or single certification under Section  
9 13.254 or 13.255, and on request by an affected retail public  
10 utility, the utility commission may order:

14 (2) the transfer of the entire certificate of public  
15 convenience and necessity of a partially decertified retail public  
16 utility to the retail public utility seeking to provide service to  
17 the decertified area.

18                   (b) The utility commission shall order service to the entire  
19 area under Subsection (a) if the utility commission finds that the  
20 decertified retail public utility will be unable to provide  
21 continuous and adequate service at an affordable cost to the  
22 remaining customers.

23 (c) The utility commission shall require the retail public  
24 utility seeking to provide service to the decertified area to  
25 provide continuous and adequate service to the remaining customers  
26 at a cost comparable to the cost of that service to its other  
27 customers and shall establish the terms under which the service

1 must be provided. The terms may include:

2 (1) transferring debt and other contract obligations;

3 (2) transferring real and personal property;

4 (3) establishing interim service rates for affected

5 customers during specified times; and

6 (4) other provisions necessary for the just and

7 reasonable allocation of assets and liabilities.

13 (e) The utility commission shall not order compensation to  
14 the decertified retail utility if service to the entire service  
15 area is ordered under this section.

16 SECTION 56. Sections 13.257(e), (i), (r), and (s), Water  
17 Code, are amended to read as follows:

1 other remedies or rights under this section. Notwithstanding any  
2 provision of this section to the contrary, a seller, title  
3 insurance company, real estate broker, or examining attorney, or an  
4 agent, representative, or person acting on behalf of the seller,  
5 company, broker, or attorney, is not liable for damages under  
6 Subsection (m) or (n) or liable for any other damages to any person  
7 for:

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

12 (A) the utility service provider did not file the  
13 map of the certificated service area in the real property records of  
14 the county in which the service area is located and with the utility  
15 commission depicting the boundaries of the service area of the  
16 utility service provider as shown in the real property records of  
17 the county in which the service area is located; and

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

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

25 (i) If the notice is given at closing as provided by  
26 Subsection (g), a purchaser, or the purchaser's heirs, successors,  
27 or assigns, may not maintain an action for damages or maintain an

1 action against a seller, title insurance company, real estate  
2 broker, or lienholder, or any agent, representative, or person  
3 acting on behalf of the seller, company, broker, or lienholder, by  
4 reason of the seller's use of the information filed with the utility  
5 commission by the utility service provider or the seller's use of  
6 the map of the certificated service area of the utility service  
7 provider filed in the real property records to determine whether  
8 the property to be purchased is within the certificated service  
9 area of the utility service provider. An action may not be  
10 maintained against a title insurance company for the failure to  
11 disclose that the described real property is included within the  
12 certificated service area of a utility service provider if the  
13 utility service provider did not file in the real property records  
14 or with the utility commission the map of the certificated service  
15 area.

16 (r) A utility service provider shall:

17 (1) record in the real property records of each county  
18 in which the service area or a portion of the service area is  
19 located a certified copy of the map of the certificate of public  
20 convenience and necessity and of any amendment to the certificate  
21 as contained in the utility commission's records, and a boundary  
22 description of the service area by:

23 (A) a metes and bounds survey certified by a  
24 licensed state land surveyor or a registered professional land  
25 surveyor;

26 (B) the Texas State Plane Coordinate System;

27 (C) verifiable landmarks, including a road,

1 creek, or railroad line; or

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

4 (2) submit to the utility commission ~~executive~~  
5 ~~director~~ evidence of the recording.

6 (s) Each county shall accept and file in its real property  
7 records a utility service provider's map presented to the county  
8 clerk under this section if the map meets filing requirements, does  
9 not exceed 11 inches by 17 inches in size, and is accompanied by the  
10 appropriate fee. The recording required by this section must be  
11 completed not later than the 31st day after the date a utility  
12 service provider receives a final order from the utility commission  
13 granting an application for a new certificate or for an amendment to  
14 a certificate that results in a change in the utility service  
15 provider's service area.

16 SECTION 57. Sections 13.301(a), (b), (c), (d), (e), (f),  
17 and (g), Water Code, are amended to read as follows:

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

25 (1) file a written application with the utility  
26 commission; and

27 (2) unless public notice is waived by the utility

1    commission [~~executive director~~] for good cause shown, give public  
2    notice of the action.

3                (b) The utility commission may require that the person  
4    purchasing or acquiring the water or sewer system demonstrate  
5    adequate financial, managerial, and technical capability for  
6    providing continuous and adequate service to the requested area and  
7    any areas currently certificated to the person.

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

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

17               (e) Before the expiration of the 120-day notification  
18   period, the utility commission [~~executive director~~] shall notify  
19   all known parties to the transaction and the Office of Public  
20   Utility Counsel whether [or] the utility commission will [~~executive~~  
21   ~~director's decision whether to request that the commission~~] hold a  
22   public hearing to determine if the transaction will serve the  
23   public interest. The utility commission shall hold [~~executive~~  
24   ~~director may request~~] a hearing if:

25                (1) the application filed with the utility commission  
26   or the public notice was improper;

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

1 sewer system has not demonstrated adequate financial, managerial,  
2 and technical capability for providing continuous and adequate  
3 service to the service area being acquired and to any areas  
4 currently certificated to the person;

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

7 (A) noncompliance with the requirements of the  
8 utility commission, the commission, or the [Texas] Department of  
9 State Health Services; or

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

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

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

21 (f) Unless the utility commission holds [executive director  
22 ~~requests that~~] a public hearing [be held], the sale, acquisition,  
23 lease, or rental may be completed as proposed:

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

25 (2) at any time after the utility commission  
26 [executive director] notifies the utility or water supply or sewer  
27 service corporation that a hearing will not be requested.

7 SECTION 58. Section 13.302, Water Code, is amended to read  
8 as follows:

9                   Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC  
10 UTILITY: REPORT. (a) A utility may not purchase voting stock in  
11 another utility doing business in this state and a person may not  
12 acquire a controlling interest in a utility doing business in this  
13 state unless the person or utility files a written application with  
14 the utility commission not later than the 61st day before the date  
15 on which the transaction is to occur.

16                   (b) The utility commission may require that a person  
17 acquiring a controlling interest in a utility demonstrate adequate  
18 financial, managerial, and technical capability for providing  
19 continuous and adequate service to the requested area and any areas  
20 currently certificated to the person.

21 (c) If the person acquiring a controlling interest cannot  
22 demonstrate adequate financial capability, the utility commission  
23 may require that the person provide a bond or other financial  
24 assurance in a form and amount specified by the utility commission  
25 to ensure continuous and adequate utility service is provided.

26 (d) The utility commission [~~executive director~~] may  
27 [~~request that the commission~~] hold a public hearing on the

1 transaction if the utility commission [~~executive director~~]  
2 believes that a criterion prescribed by Section 13.301(e) applies.

3 (e) Unless the utility commission holds [~~executive director~~]  
4 ~~requests that~~] a public hearing [~~be held~~], the purchase or  
5 acquisition may be completed as proposed:

6 (1) at the end of the 60-day period; or  
7 (2) at any time after the utility commission  
8 [~~executive director~~] notifies the person or utility that a hearing  
9 will not be requested.

10 (f) If a hearing is requested or if the person or utility  
11 fails to make the application to the utility commission as  
12 required, the purchase or acquisition may not be completed unless  
13 the utility commission determines that the proposed transaction  
14 serves the public interest. A purchase or acquisition that is not  
15 completed in accordance with the provisions of this section is  
16 void.

17 SECTION 59. Section 13.303, Water Code, is amended to read  
18 as follows:

19 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may  
20 not loan money, stocks, bonds, notes, or other evidences of  
21 indebtedness to any corporation or person owning or holding  
22 directly or indirectly any stock of the utility unless the utility  
23 reports the transaction to the utility commission within 60 days  
24 after the date of the transaction.

25 SECTION 60. Section 13.304, Water Code, is amended to read  
26 as follows:

27 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that

1 receives notice that all or a portion of the utility's facilities or  
2 property used to provide utility service are being posted for  
3 foreclosure shall notify the utility commission and the commission  
4 in writing of that fact not later than the 10th day after the date on  
5 which the utility receives the notice.

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

12 (c) The financial institution may operate the utility for an  
13 interim period prescribed by utility commission rule before  
14 transferring or otherwise obtaining a certificate of convenience  
15 and necessity. A financial institution that operates a utility  
16 during an interim period under this subsection is subject to each  
17 utility commission rule to which the utility was subject and in the  
18 same manner.

19 SECTION 61. Section 13.341, Water Code, is amended to read  
20 as follows:

21 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The  
22 utility commission has jurisdiction over affiliated interests  
23 having transactions with utilities under the jurisdiction of the  
24 utility commission to the extent of access to all accounts and  
25 records of those affiliated interests relating to such  
26 transactions, including but in no way limited to accounts and  
27 records of joint or general expenses, any portion of which may be

1 applicable to those transactions.

2 SECTION 62. Section 13.342, Water Code, is amended to read  
3 as follows:

4 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING  
5 SECURITIES. The utility commission may require the disclosure of  
6 the identity and respective interests of every owner of any  
7 substantial interest in the voting securities of any utility or its  
8 affiliated interest. One percent or more is a substantial interest  
9 within the meaning of this section.

10 SECTION 63. Section 13.343(a), Water Code, is amended to  
11 read as follows:

12 (a) The owner of a utility that supplies retail water  
13 service may not contract to purchase from an affiliated supplier  
14 wholesale water service for any of that owner's systems unless:

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

18 (2) the utility commission ~~[executive director]~~  
19 determines that the utility cannot obtain wholesale water service  
20 from another source at a lower cost than from the affiliate.

21 SECTION 64. Section 13.381, Water Code, is amended to read  
22 as follows:

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

26 SECTION 65. Section 13.382(a), Water Code, is amended to  
27 read as follows:

1                   (a) Any party represented by counsel who alleges that  
2 existing rates are excessive or that rates prescribed by the  
3 utility commission are excessive and who is a prevailing party in  
4 proceedings for review of a utility commission order or decision  
5 may in the same action recover against the regulation fund  
6 reasonable fees for attorneys and expert witnesses and other costs  
7 incurred by him before the utility commission and the court. The  
8 amount of the attorney's fees shall be fixed by the court.

9                   SECTION 66. Section 13.411, Water Code, is amended to read  
10 as follows:

11                   Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)  
12 If the utility commission or the commission has reason to believe  
13 that any retail public utility or any other person or corporation is  
14 engaged in or is about to engage in any act in violation of this  
15 chapter or of any order or rule of the utility commission or the  
16 commission entered or adopted under this chapter or that any retail  
17 public utility or any other person or corporation is failing to  
18 comply with this chapter or with any rule or order, the attorney  
19 general on request of the utility commission or the commission, in  
20 addition to any other remedies provided in this chapter, shall  
21 bring an action in a court of competent jurisdiction in the name of  
22 and on behalf of the utility commission or the commission against  
23 the retail public utility or other person or corporation to enjoin  
24 the commencement or continuation of any act or to require  
25 compliance with this chapter or the rule or order.

26                   (b) If the utility commission or the executive director of  
27 the commission has reason to believe that the failure of the owner

1 or operator of a water utility to properly operate, maintain, or  
2 provide adequate facilities presents an imminent threat to human  
3 health or safety, the utility commission or the executive director  
4 shall immediately:

- 5 (1) notify the utility's representative; and
- 6 (2) initiate enforcement action consistent with:
  - 7 (A) this subchapter; and
  - 8 (B) procedural rules adopted by the utility  
9 commission or the commission.

10 SECTION 67. Section 13.4115, Water Code, is amended to read  
11 as follows:

12 Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER  
13 CHARGE; PENALTY. In regard to a customer complaint arising out of a  
14 charge made by a public utility, if the utility commission [~~the~~  
15 ~~executive director~~] finds that the utility has failed to make the  
16 proper adjustment to the customer's bill after the conclusion of  
17 the complaint process established by the utility commission, the  
18 utility commission may issue an order requiring the utility to make  
19 the adjustment. Failure to comply with the order within 30 days of  
20 receiving the order is a violation for which the utility commission  
21 may impose an administrative penalty under Section 13.4151.

22 SECTION 68. Sections 13.412(a), (f), and (g), Water Code,  
23 are amended to read as follows:

24 (a) At the request of the utility commission or the  
25 commission, the attorney general shall bring suit for the  
26 appointment of a receiver to collect the assets and carry on the  
27 business of a water or sewer utility that:

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

11 (1) failure to pay a bill or obligation owed to a  
12 retail public utility or to an electric or gas utility with the  
13 result that the utility service provider has issued a notice of  
14 discontinuance of necessary services;

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

17 (3) failure to adequately maintain facilities,  
18 resulting in potential health hazards, extended outages, or  
19 repeated service interruptions;

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

22 (5) failure to secure an alternative available water  
23 supply during an outage;

24 (6) displaying a pattern of hostility toward or  
25 repeatedly failing to respond to the utility commission or the  
26 commission or the utility's customers; and

27 (7) failure to provide the utility commission or the

1 commission with adequate information on how to contact the utility  
2 for normal business and emergency purposes.

3 (g) Notwithstanding Section 64.021, Civil Practice and  
4 Remedies Code, a receiver appointed under this section may seek  
5 ~~commission~~ approval from the utility commission and the  
6 commission to acquire the water or sewer utility's facilities and  
7 transfer the utility's certificate of convenience and necessity.  
8 The receiver must apply in accordance with Subchapter H.

9 SECTION 69. Section 13.413, Water Code, is amended to read  
10 as follows:

11 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The  
12 receiver may, subject to the approval of the court and after giving  
13 notice to all interested parties, sell or otherwise dispose of all  
14 or part of the real or personal property of a water or sewer utility  
15 against which a proceeding has been brought under this subchapter  
16 to pay the costs incurred in the operation of the receivership. The  
17 costs include:

18 (1) payment of fees to the receiver for his services;  
19 (2) payment of fees to attorneys, accountants,  
20 engineers, or any other person or entity that provides goods or  
21 services necessary to the operation of the receivership; and  
22 (3) payment of costs incurred in ensuring that any  
23 property owned or controlled by a water or sewer utility is not used  
24 in violation of a final order of the utility commission or the  
25 commission.

26 SECTION 70. Section 13.4131, Water Code, is amended to read  
27 as follows:

1           Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The  
2 utility commission, after providing to the utility notice and an  
3 opportunity for a hearing, may place a utility under supervision  
4 for gross or continuing mismanagement, gross or continuing  
5 noncompliance with this chapter or a rule adopted under this  
6 chapter [commission rules], or noncompliance with an order issued  
7 under this chapter [commission orders].

8           (b) While supervising a utility, the utility commission may  
9 require the utility to abide by conditions and requirements  
10 prescribed by the utility commission, including:

11           (1) management requirements;  
12           (2) additional reporting requirements;  
13           (3) restrictions on hiring, salary or benefit  
14 increases, capital investment, borrowing, stock issuance or  
15 dividend declarations, and liquidation of assets; and  
16           (4) a requirement that the utility place the utility's  
17 funds into an account in a financial institution approved by the  
18 utility commission and use of those funds shall be restricted to  
19 reasonable and necessary utility expenses.

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

26           SECTION 71. Sections 13.4132(a), (b), and (d), Water Code,  
27 are amended to read as follows:

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

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

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

10                  (b) The utility commission or the commission may appoint a  
11 person under this section by emergency order, and notice of the  
12 action is adequate if the notice is mailed or hand-delivered to the  
13 last known address of the utility's headquarters.

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

17                  SECTION 72. Sections 13.4133(a) and (c), Water Code, are  
18 amended to read as follows:

19                  (a) Notwithstanding the requirements of Subchapter F  
20 [~~Section 13.187 of this code~~], the utility commission may authorize  
21 an emergency rate increase for a utility for which a person has been  
22 appointed under Section 13.4132 [~~of this code~~] or for which a  
23 receiver has been appointed under Section 13.412 [~~of this code~~] if  
24 the increase is necessary to ensure the provision of continuous and  
25 adequate services to the utility's customers.

26                  (c) The utility commission shall schedule a hearing to  
27 establish a final rate within 15 months after the date on which an

1 emergency rate increase takes effect. The utility commission shall  
2 require the utility to provide notice of the hearing to each  
3 customer. The additional revenues collected under an emergency  
4 rate increase are subject to refund if the utility commission finds  
5 that the rate increase was larger than necessary to ensure  
6 continuous and adequate service.

7 SECTION 73. Sections 13.414(a) and (c), Water Code, are  
8 amended to read as follows:

9 (a) Any retail public utility or affiliated interest that  
10 violates this chapter, fails to perform a duty imposed on it, or  
11 fails, neglects, or refuses to obey an order, rule, direction, or  
12 requirement of the utility commission or the commission or decree  
13 or judgment of a court is subject to a civil penalty of not less than  
14 \$100 nor more than \$5,000 for each violation.

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

19 SECTION 74. Sections 13.4151(a), (b), (c), (d), (e), (f),  
20 (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as  
21 follows:

22 (a) If a person, affiliated interest, or entity subject to  
23 the jurisdiction of the utility commission or the commission  
24 violates this chapter or a rule or order adopted under this chapter,  
25 the utility commission or the commission, as applicable, may assess  
26 a penalty against that person, affiliated interest, or entity as  
27 provided by this section. The penalty may be in an amount not to

1 exceed \$5,000 a day. Each day a violation continues may be  
2 considered a separate violation.

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

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

7 (2) with respect to the alleged violator:

8 (A) the history and extent of previous  
9 violations;

10 (B) the degree of culpability, including whether  
11 the violation was attributable to mechanical or electrical failures  
12 and whether the violation could have been reasonably anticipated  
13 and avoided;

14 (C) the demonstrated good faith, including  
15 actions taken by the person, affiliated interest, or entity to  
16 correct the cause of the violation;

17 (D) any economic benefit gained through the  
18 violation; and

19 (E) the amount necessary to deter future  
20 violations; and

21 (3) any other matters that justice requires.

22 (c) If, after examination of a possible violation and the  
23 facts surrounding that possible violation, the utility commission  
24 or the executive director of the commission concludes that a  
25 violation has occurred, the utility commission or the executive  
26 director may issue a preliminary report stating the facts on which  
27 that conclusion is based, recommending that a penalty under this

1 section be imposed on the person, affiliated interest, or retail  
2 public utility charged, and recommending the amount of that  
3 proposed penalty. The utility commission or the executive director  
4 shall base the recommended amount of the proposed penalty on the  
5 factors provided by Subsection (b) [of this section], and shall  
6 analyze each factor for the benefit of the agency [commission].

7 (d) Not later than the 10th day after the date on which the  
8 report is issued, the utility commission or the executive director  
9 of the commission shall give written notice of the report to the  
10 person, affiliated interest, or retail public utility charged with  
11 the violation. The notice shall include a brief summary of the  
12 charges, a statement of the amount of the penalty recommended, and a  
13 statement of the right of the person, affiliated interest, or  
14 retail public utility charged to a hearing on the occurrence of the  
15 violation, the amount of the penalty, or both.

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

22 (f) If the person, affiliated interest, or retail public  
23 utility charged with the violation consents to the penalty  
24 recommended in the report described by Subsection (c) [by the  
25 executive director] or fails to timely respond to the notice, the  
26 utility commission or the commission by order shall assess that  
27 penalty or order a hearing to be held on the findings and

1 recommendations in the ~~executive director's~~ report. If the  
2 utility commission or the commission assesses the penalty  
3 recommended by the report, the utility commission or the commission  
4 shall give written notice to the person, affiliated interest, or  
5 retail public utility charged of its decision.

6 (g) If the person, affiliated interest, or retail public  
7 utility charged requests or the utility commission or the  
8 commission orders a hearing, the agency ~~commission~~ shall call a  
9 hearing and give notice of the hearing. As a result of the hearing,  
10 the agency ~~commission~~ by order may find that a violation has  
11 occurred and may assess a civil penalty, may find that a violation  
12 has occurred but that no penalty should be assessed, or may find  
13 that no violation has occurred. All proceedings under this  
14 subsection are subject to Chapter 2001, Government Code. In making  
15 any penalty decision, the agency ~~commission~~ shall analyze each of  
16 the factors provided by Subsection (b) ~~[of this section]~~.

17 (h) The utility commission or the commission shall give  
18 notice of its decision to the person, affiliated interest, or  
19 retail public utility charged, and if the agency ~~commission~~ finds  
20 that a violation has occurred and has assessed a penalty, the agency  
21 ~~[the commission]~~ shall give written notice to the person,  
22 affiliated interest, or retail public utility charged of its  
23 findings, of the amount of the penalty, and of the person's,  
24 affiliated interest's, or retail public utility's right to judicial  
25 review of the agency's ~~commission's~~ order. If the agency  
26 ~~commission~~ is required to give notice of a penalty under this  
27 subsection or Subsection (f) ~~[of this section]~~, the agency

1 [commission] shall file notice of the agency's [~~its~~] decision in  
2 the Texas Register not later than the 10th day after the date on  
3 which the decision is adopted.

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

8 (1) pay the penalty in full; or

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

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

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

18 (j) Failure to forward the money to or to post the bond with  
19 the agency [~~commission~~] within the time provided by Subsection (i)  
20 [~~of this section~~] constitutes a waiver of all legal rights to  
21 judicial review. If the person, affiliated interest, or retail  
22 public utility charged fails to forward the money or post the bond  
23 as provided by Subsection (i) [~~of this section~~], the agency  
24 [~~commission~~] or the executive director of the agency may forward  
25 the matter to the attorney general for enforcement.

26 (k) Judicial review of the order or decision of the agency  
27 [~~commission~~] assessing the penalty shall be under the substantial

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1 evidence rule and may be instituted by filing a petition with a  
2 district court in Travis County, as provided by Subchapter G,  
3 Chapter 2001, Government Code.

4 (m) Notwithstanding any other provision of law, the agency  
5 ~~commission~~ may compromise, modify, extend the time for payment  
6 of, or remit, with or without condition, any penalty imposed under  
7 this section.

8 SECTION 75. Section 13.417, Water Code, is amended to read  
9 as follows:

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

17 SECTION 76. Section 13.418, Water Code, is amended to read  
18 as follows:

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

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

1 Safety Code.

2 SECTION 77. Section 13.501(7), Water Code, is amended to  
3 read as follows:

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

8 SECTION 78. Section 13.502(e), Water Code, is amended to  
9 read as follows:

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

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

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

19 SECTION 79. Sections 13.503(a), (b), and (e), Water Code,  
20 are amended to read as follows:

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

24 (b) Notwithstanding any other law, the utility commission  
25 shall adopt rules and standards under which an owner, operator, or  
26 manager of an apartment house, manufactured home rental community,  
27 or multiple use facility that is not individually metered for water

1 for each rental or dwelling unit may install submetering equipment  
2 for each individual rental or dwelling unit for the purpose of  
3 fairly allocating the cost of each individual rental or dwelling  
4 unit's water consumption, including wastewater charges based on  
5 water consumption. In addition to other appropriate safeguards for  
6 the tenant, the rules shall require that, except as provided by this  
7 section, an apartment house owner, manufactured home rental  
8 community owner, multiple use facility owner, or condominium  
9 manager may not impose on the tenant any extra charges, over and  
10 above the cost per gallon and any other applicable taxes and  
11 surcharges that are charged by the retail public utility to the  
12 owner or manager, and that the rental unit or apartment house owner  
13 or manager shall maintain adequate records regarding submetering  
14 and make the records available for inspection by the tenant during  
15 reasonable business hours. The rules shall allow an owner or  
16 manager to charge a tenant a fee for late payment of a submetered  
17 water bill if the amount of the fee does not exceed five percent of  
18 the bill paid late. All submetering equipment is subject to the  
19 rules and standards established by the utility commission for  
20 accuracy, testing, and record keeping of meters installed by  
21 utilities and to the meter-testing requirements of Section 13.140  
22 [~~of this code~~].

23 (e) The utility commission may authorize a building owner to  
24 use submetering equipment that relies on integrated radio based  
25 meter reading systems and remote registration in a building  
26 plumbing system using submeters that comply with nationally  
27 recognized plumbing standards and are as accurate as utility water

1 meters in single application conditions.

2 SECTION 80. Section 13.5031, Water Code, is amended to read  
3 as follows:

4 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any  
5 other law, the utility commission shall adopt rules and standards  
6 governing billing systems or methods used by manufactured home  
7 rental community owners, apartment house owners, condominium  
8 managers, or owners of other multiple use facilities for prorating  
9 or allocating among tenants nonsubmetered master metered utility  
10 service costs. In addition to other appropriate safeguards for the  
11 tenant, those rules shall require that:

12 (1) the rental agreement contain a clear written  
13 description of the method of calculation of the allocation of  
14 nonsubmetered master metered utilities for the manufactured home  
15 rental community, apartment house, or multiple use facility;

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

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

25 (4) the owner or condominium manager shall maintain  
26 adequate records regarding the utility consumption of the  
27 manufactured home rental community, apartment house, or multiple

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1 use facility, the charges assessed by the retail public utility,  
2 and the allocation of the utility costs to the tenants;

12 SECTION 81. Section 13.505, Water Code, is amended to read  
13 as follows:

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

1 unintentional mistake.

2 SECTION 82. Section 13.512, Water Code, is amended to read  
3 as follows:

4 Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION  
5 CONTRACTS. Any eligible city is authorized to enter into  
6 privatization contracts if such action is recommended by the board  
7 of utility trustees and authorized by the governing body of the  
8 eligible city pursuant to an ordinance. Any privatization contract  
9 entered into prior to the effective date of this Act is validated,  
10 ratified, and approved. Each eligible city shall file a copy of its  
11 privatization contract with the utility commission, for  
12 information purposes only, within 60 days of execution or the  
13 effective date of this Act, whichever is later.

14 SECTION 83. Section 13.513, Water Code, is amended to read  
15 as follows:

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

1 in addition to, an eligible city may be a "public utility" for the  
2 purposes of this chapter [~~Chapter 13~~] with respect to such other  
3 person or municipality.

4 SECTION 84. Section 49.352(c), Water Code, is amended to  
5 read as follows:

6 (c) For purposes of this section, a municipality may obtain  
7 single certification in the manner provided by Section 13.255,  
8 except that the municipality may file an application with the  
9 Public Utility Commission of Texas [~~commission~~] to grant single  
10 certification immediately after the municipality provides notice  
11 of intent to provide service as required by Section 13.255(b).

12 SECTION 85. Section 552.047(e), Local Government Code, is  
13 amended to read as follows:

14 (e) Users residing within the established service area, but  
15 outside the municipality's boundaries, may appeal rates  
16 established for drainage charges under [~~to the Texas Natural~~  
17 ~~Resource Conservation Commission as authorized by~~] Section  
18 13.043(b), [~~of the~~] Water Code.

19 SECTION 86. Section 7201.004(b), Special District Local  
20 Laws Code, is amended to read as follows:

21 (b) This section does not apply to:

22 (1) rules or regulations concerning potable water  
23 quality standards; or

24 (2) conflicts relating to service areas or  
25 certificates issued to the corporation or district by the Public  
26 Utility Commission of Texas or the Texas Commission on  
27 Environmental Quality.

1 SECTION 87. Section 7201.005(c), Special District Local  
2 Laws Code, is amended to read as follows:

3 (c) District boundaries may be modified in accordance with  
4 Chapters 13 and 49, Water Code, except that the boundaries must  
5 include all territory in any area included under a certificate of  
6 convenience and necessity issued by the Public Utility Commission  
7 of Texas or the Texas Commission on Environmental Quality to the  
8 district.

9 SECTION 88. Section 7201.102, Special District Local Laws  
10 Code, is amended to read as follows:

11 Sec. 7201.102. PROVISION OF SERVICE. The district shall at  
12 all times operate and construct necessary improvements within the  
13 certificated areas established by the Public Utility Commission of  
14 Texas or the Texas Commission on Environmental Quality [~~commission~~]  
15 to provide uninterrupted, continuous, and adequate service to  
16 existing and future customers for water, sewer, and contract  
17 services.

18 SECTION 89. Section 8363.106(b), Special District Local  
19 Laws Code, is amended to read as follows:

20 (b) In relation to a retail public utility that provides  
21 water or sewer service to all or part of the area of the district  
22 under a certificate of public convenience and necessity, the  
23 district may exercise the powers given to a municipality provided  
24 by Section 13.255, Water Code, as if the district were a  
25 municipality that had annexed the area of the district. The Public  
26 Utility Commission of Texas [~~commission~~] shall grant single  
27 certification as to the city as provided by Section 13.255(c),

1 Water Code, in the event that the district applies for the  
2 certification on the city's behalf in the manner provided by  
3 Section 13.255(b), Water Code.

4 SECTION 90. Section 8363.251(a), Special District Local  
5 Laws Code, is amended to read as follows:

6 (a) The city may dissolve the district by ordinance after  
7 provision is made for all debts incurred by the district if one or  
8 more of the following does not occur:

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

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

17 (3) on or before the last day of the third year after  
18 the effective date of the Act enacting this chapter, the Public  
19 Utility Commission of Texas [commission] issues an order approving  
20 the sale and transfer of a certificate of public convenience and  
21 necessity authorizing the city to provide retail water service to  
22 territory in the district; or

23 (4) by the end of the fifth year after the effective  
24 date of the Act enacting this chapter, the district has completed  
25 construction of internal streets and water and sanitary sewer  
26 facilities sufficient to serve at least 100 residential lots in the  
27 district.

1 SECTION 91. Section 8801.201, Special District Local Laws  
2 Code, is amended to read as follows:

3 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A person  
4 who is required to convert to surface water under this chapter and  
5 who purchases that water supply wholesale from a political  
6 subdivision as defined by Section 12.013(b), Water Code, may appeal  
7 to the Public Utility Commission of Texas [~~commission~~] the rates  
8 the political subdivision charges to the person. Chapter 12, Water  
9 Code, and rules adopted under that chapter apply to an appeal under  
10 this section.

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

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

17 SECTION 92. (a) On September 1, 2014, the following are  
18 transferred from the Texas Commission on Environmental Quality to  
19 the Public Utility Commission of Texas:

20 (1) the powers, duties, functions, programs, and  
21 activities of the Texas Commission on Environmental Quality  
22 relating to the economic regulation of water and sewer service,  
23 including the issuance and transfer of certificates of convenience  
24 and necessity, the determination of rates, and the administration  
25 of hearings and proceedings involving those matters, under Chapters  
26 11, 12, and 13, Water Code, as provided by this Act;

27 (2) any obligations and contracts of the Texas

1 Commission on Environmental Quality that are directly related to  
2 implementing a power, duty, function, program, or activity  
3 transferred under this Act; and

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

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

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

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

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

27 (c) The memorandum of understanding under this section is

1 not required to be adopted by rule under Section 5.104, Water Code.

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

11 (e) The Texas Commission on Environmental Quality and the  
12 Public Utility Commission of Texas shall periodically update the  
13 Office of Public Utility Counsel on the anticipated contents of the  
14 memorandum of understanding under this section during the  
15 development of the memorandum.

16 (f) The Texas Commission on Environmental Quality and the  
17 Public Utility Commission of Texas shall appoint a transition team  
18 to accomplish the purposes of this section. The transition team may  
19 consult with the Office of Public Utility Counsel to accomplish the  
20 purposes of this section. The transition team shall establish  
21 guidelines on how the two agencies will cooperate regarding:

22 (1) meeting federal drinking water standards;  
23 (2) maintaining adequate supplies of water;  
24 (3) meeting established design criteria for  
25 wastewater treatment plants;

26 (4) demonstrating the economic feasibility of  
27 regionalization; and

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(5) serving the needs of economically distressed areas.

9                   (h)    The    memorandum    required    by    this    section    must    be  
10    completed by August 1, 2014.

15 SECTION 93. This Act takes effect September 1, 2013.