

By: _____

____.B. No. _____

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;

17 (3) the state's water quality program including
18 issuance of permits, enforcement of water quality rules, standards,
19 orders, and permits, and water quality planning;

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;

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

3 (7) the administration of the state's program relating
4 to inactive hazardous substance, pollutant, and contaminant
5 disposal facilities;

6 (8) the administration of a portion of the state's
7 injection well program;

8 (9) the administration of the state's programs
9 involving underground water and water wells and drilled and mined
10 shafts;

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

13 (11) the responsibilities assigned to the commission
14 by Chapters 361, 363, 382, and 401, Health and Safety Code; and

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

1 Subdivision (21) to read as follows:

2 (21) "Utility commission" means the Public Utility
3 Commission of Texas.

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

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;

3 (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

12 (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.

19 (4-a) "Class A utility" means:

20 (A) a public utility that provides retail water
21 or sewer utility service through 10,000 or more taps or
22 connections; or

23 (B) an affiliate of a public utility described by
24 Paragraph (A).

25 (4-b) "Class B utility" means a public utility that
26 provides retail water or sewer utility service through 500 or more
27 taps or connections but fewer than 10,000 taps or connections.

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;

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

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:

23 (1) shall assess the effect of utility rate changes
24 and other regulatory actions on residential consumers in this
25 state;

26 (2) shall advocate in the office's own name a position
27 determined by the counsellor to be most advantageous to a

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.

1 (b) The governing body of a municipality by ordinance may
2 elect to have the utility commission exercise exclusive original
3 jurisdiction over the utility rates, operation, and services of
4 utilities, within the incorporated limits of the municipality.

5 (c) The governing body of a municipality that surrenders its
6 jurisdiction to the utility commission may reinstate its
7 jurisdiction by ordinance at any time after the second anniversary
8 of the date on which the municipality surrendered its jurisdiction
9 to the utility commission, except that the municipality may not
10 reinstate its jurisdiction during the pendency of a rate proceeding
11 before the utility commission. The municipality may not surrender
12 its jurisdiction again until the second anniversary of the date on
13 which the municipality reinstates jurisdiction.

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:

1 (1) a nonprofit water supply or sewer service
2 corporation created and operating under Chapter 67;

3 (2) a utility under the jurisdiction of a municipality
4 inside the corporate limits of the municipality;

5 (3) a municipally owned utility, if the ratepayers
6 reside outside the corporate limits of the municipality;

7 (4) a district or authority created under Article III,
8 Section 52, or Article XVI, Section 59, of the Texas Constitution
9 that provides water or sewer service to household users; and

10 (5) a utility owned by an affected county, if the
11 ratepayer's rates are actually or may be adversely affected. For
12 the purposes of this section ratepayers who reside outside the
13 boundaries of the district or authority shall be considered a
14 separate class from ratepayers who reside inside those boundaries.

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;

- 1 (2) establish forms for all reports;
- 2 (3) determine the time for reports and the frequency
3 with which any reports are to be made;
- 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;
- 9 (6) require that a copy of any report filed with any
10 federal agency or any governmental agency or body of any other state
11 be filed with it; and
- 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 [~~7~~] 13.043[~~7~~] 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~~
5 ~~Utility Commission of Texas, the Public Utility Commission of~~
6 ~~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~~
21 ~~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 WHOLESAL 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:

1 (A) five percent; or
2 (B) the percentage increase in the price index
3 between the year preceding the year in which the utility requests
4 the adjustment and the year in which the utility requests the
5 adjustment.

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:

12 (a) Notwithstanding any other provision in this chapter,
13 the utility commission by rule shall adopt a procedure allowing a
14 utility to file with the utility commission an application to
15 timely adjust the utility's rates to reflect an increase or
16 decrease in documented energy costs in a pass through clause. The
17 utility commission, by rule, shall require the pass through of
18 documented decreases in energy costs within a reasonable time. The
19 pass through, whether a decrease or increase, shall be implemented
20 on no later than an annual basis, unless the utility commission
21 determines a special circumstance applies.

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;

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

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

4 (7) according to the tax roll of the central appraisal
5 district for each county in which the proposed service area is
6 located, a list of the owners of each tract of land that is:

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:

13 (b) Except as provided by Subsections (c), (c-1), and (c-2),
14 the utility commission may not grant to a retail public utility a
15 certificate of public convenience and necessity for a service area
16 within the boundaries or extraterritorial jurisdiction of a
17 municipality without the consent of the municipality. The
18 municipality may not unreasonably withhold the consent. As a
19 condition of the consent, a municipality may require that all water
20 and sewer facilities be designed and constructed in accordance with
21 the municipality's standards for facilities.

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:

1 (1) does not have the ability to provide service; or
2 (2) has failed to make a good faith effort to provide
3 service on reasonable terms and conditions.

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

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:

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

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;

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 (l) 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.

1 (m) The utility commission shall deny an application for
2 single certification by a municipality that fails to demonstrate
3 compliance with the commission's minimum requirements for public
4 drinking water systems.

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:

11 (1) the retail public utility seeking to provide
12 service to a decertified area to serve the entire service area of
13 the retail public utility that is being decertified; and

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.

8 (d) The retail public utility seeking decertification shall
9 not charge the affected customers any transfer fee or other fee to
10 obtain service other than the retail public utility's usual and
11 customary rates for monthly service or the interim rates set by the
12 utility commission, if applicable.

13 (e) The utility commission shall not order compensation to
14 the decertificated 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:

18 (e) The notice must be given to the prospective purchaser
19 before the execution of a binding contract of purchase and sale.
20 The notice may be given separately or as an addendum to or paragraph
21 of the contract. If the seller fails to provide the notice required
22 by this section, the purchaser may terminate the contract. If the
23 seller provides the notice at or before the closing of the purchase
24 and sale contract and the purchaser elects to close even though the
25 notice was not timely provided before the execution of the
26 contract, it is conclusively presumed that the purchaser has waived
27 all rights to terminate the contract and recover damages or pursue

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 [~~of~~] 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.

1 (g) If a hearing is requested or if the utility or water
2 supply or sewer service corporation fails to make the application
3 as required or to provide public notice, the sale, acquisition,
4 lease, or rental may not be completed unless the utility commission
5 determines that the proposed transaction serves the public
6 interest.

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:

- 1 (1) has abandoned operation of its facilities;
- 2 (2) informs the utility commission or the commission
3 that the owner is abandoning the system;
- 4 (3) violates a final order of the utility commission
5 or the commission; or
- 6 (4) allows any property owned or controlled by it to be
7 used in violation of a final order of the utility commission or the
8 commission.

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

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

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

3 (5) the owner or condominium manager shall maintain
4 all necessary records concerning utility allocations, including
5 the retail public utility's bills, and shall make the records
6 available for inspection by the tenants during normal business
7 hours; and

8 (6) the owner or condominium manager may charge a
9 tenant a fee for late payment of an allocated water bill if the
10 amount of the fee does not exceed five percent of the bill paid
11 late.

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

1 (5) serving the needs of economically distressed
2 areas.

3 (g) A rule, form, policy, procedure, or decision of the
4 Texas Commission on Environmental Quality related to a power, duty,
5 function, program, or activity transferred under this Act continues
6 in effect as a rule, form, policy, procedure, or decision of the
7 Public Utility Commission of Texas and remains in effect until
8 amended or replaced by that agency.

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

11 (i) The Public Utility Commission of Texas and the Texas
12 Commission on Environmental Quality shall adopt rules to implement
13 the changes in law made by this Act to Chapters 11, 12, and 13, Water
14 Code, not later than September 1, 2015.

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