

By: Nichols

S.B. No. 206

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuation and functions of the Public Utility
3 Commission of Texas, to the transfer of certain functions from the
4 Texas Commission on Environmental Quality to the Public Utility
5 Commission of Texas, and to the functions of the Office of Public
6 Utility Counsel; authorizing a fee.

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

8 ARTICLE 1. GENERAL PROVISIONS RELATING TO THE PUBLIC UTILITY
9 COMMISSION OF TEXAS

10 SECTION 1.01. Section 12.005, Utilities Code, is amended to
11 read as follows:

12 Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility
13 Commission of Texas is subject to Chapter 325, Government Code
14 (Texas Sunset Act). Unless continued in existence as provided by
15 that chapter or by Chapter 39, the commission is abolished and this
16 title expires September 1, 2023 [~~2013~~].

17 SECTION 1.02. Section 12.155, Utilities Code, is amended by
18 adding Subsection (d) to read as follows:

19 (d) A commissioner may not be employed by an independent
20 organization certified under Section 39.151. The prohibition under
21 this subsection applies until the second anniversary of the date
22 the commissioner ceases to serve as a commissioner.

23 SECTION 1.03. Chapter 15, Utilities Code, is amended by
24 adding Subchapter D to read as follows:

1 SUBCHAPTER D. CEASE AND DESIST ORDERS

2 Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter
3 applies only to a person to whom Subtitle B applies.

4 Sec. 15.102. RULES. The commission shall adopt rules to
5 implement this subchapter.

6 Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission
7 may proceed solely under this subchapter or under this subchapter
8 in conjunction with other applicable law.

9 Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The
10 commission on its own motion may issue a cease and desist order:

11 (1) after providing notice and an opportunity for a
12 hearing if practicable or without notice or opportunity for a
13 hearing; and

14 (2) if the commission determines that the conduct of a
15 person:

16 (A) poses a threat to continuous and adequate
17 electric service;

18 (B) is hazardous;

19 (C) creates an immediate danger to the public
20 safety; or

21 (D) is causing or can be reasonably expected to
22 cause an immediate injury to a customer of electric services and
23 that the injury is incapable of being repaired or rectified by
24 monetary compensation.

25 (b) The commission by order or rule may delegate to the
26 executive director the authority to issue cease and desist orders
27 under this subchapter.

1 Sec. 15.105. NOTICE. (a) Notice of a proposed order must
2 be given not later than the 10th day before the date set for a
3 hearing if the commission requires notice and hearing before
4 issuing the order.

5 (b) On issuance of an order under Section 15.104 with or
6 without a hearing, the commission shall serve on the person
7 affected by the order an order that:

8 (1) contains a statement of the charges; and

9 (2) requires the person immediately to cease and
10 desist from the acts, methods, or practices stated in the order.

11 (c) The commission shall serve the order by registered or
12 certified mail, return receipt requested, to the person's last
13 known address.

14 Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,
15 does not apply to the issuance of a cease and desist order under
16 this subchapter without a hearing. A hearing conducted before or
17 after issuance of an order under this subchapter is a contested case
18 under Chapter 2001, Government Code.

19 (b) If the commission issues an order under this subchapter
20 without a hearing, the person affected by the order may request a
21 hearing to affirm, modify, or set aside the order. A request must
22 be submitted not later than the 30th day after the date the person
23 receives the order. The commission shall set the hearing for a date
24 that is:

25 (1) not later than the 10th day after the date the
26 commission receives a request for a hearing; or

27 (2) agreed to by the person and the commission.

1 (c) At or following the hearing, the commission shall wholly
2 or partly affirm, modify, or set aside the order. If the person
3 affected by an order does not request a hearing in the manner
4 provided by Subsection (b) and the commission does not hold a
5 hearing on the order, the order is affirmed without further action
6 by the commission.

7 (d) The commission may hold a hearing under this subchapter
8 or may authorize the State Office of Administrative Hearings to
9 hold the hearing.

10 Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a
11 hearing under this subchapter, an order continues in effect unless
12 the order is stayed by the commission.

13 SECTION 1.04. Section 39.151, Utilities Code, is amended by
14 amending Subsections (d-1) and (e) and adding Subsections (d-2),
15 (d-3), (d-4), and (e-1) to read as follows:

16 (d-1) The commission shall require an independent
17 organization certified by the commission under this section to
18 submit to the commission the organization's entire proposed annual
19 budget. The commission shall review the proposed budgets either
20 annually or biennially and may approve, disapprove, or modify any
21 item included in a proposed budget. The commission by rule shall
22 establish the type of information or documents needed to
23 effectively evaluate the proposed budget and reasonable dates for
24 the submission of that information or those documents. The
25 commission shall establish a procedure to provide public notice of
26 and public participation in the budget review process.

27 (d-2) Except as otherwise agreed to by the commission and an

1 independent organization certified by the commission under this
2 section, the organization must submit to the commission for review
3 and approval proposals for obtaining debt financing or for
4 refinancing existing debt. The commission may approve, disapprove,
5 or modify a proposal.

6 (d-3) An independent organization certified by the
7 commission under this section shall develop proposed performance
8 measures to track the organization's operations. The independent
9 organization must submit the proposed performance measures to the
10 commission for review and approval. The commission shall review
11 the organization's performance as part of the budget review process
12 under Subsection (d-1). The commission shall prepare a report at
13 the time the commission approves the organization's budget
14 detailing the organization's performance and submit the report to
15 the lieutenant governor, the speaker of the house of
16 representatives, and each house and senate standing committee that
17 has jurisdiction over electric utility issues.

18 (d-4) The commission may:

19 (1) require an independent organization to provide
20 reports and information relating to the independent organization's
21 performance of the functions prescribed by this section and
22 relating to the organization's revenues, expenses, and other
23 financial matters;

24 (2) prescribe a system of accounts for an independent
25 organization;

26 (3) conduct audits of an independent organization's
27 performance of the functions prescribed by this section or relating

1 to its revenues, expenses, and other financial matters and may
2 require an independent organization to conduct such an audit;

3 (4) inspect an independent organization's facilities,
4 records, and accounts during reasonable hours and after reasonable
5 notice to the independent organization;

6 (5) assess administrative penalties against an
7 independent organization that violates this title or a rule or
8 order adopted by the commission and, at the request of the
9 commission, the attorney general may apply for a court order to
10 require an independent organization to comply with commission rules
11 and orders in the manner provided by Chapter 15; and

12 (6) resolve disputes between an affected person and an
13 independent organization and adopt procedures for the efficient
14 resolution of such disputes.

15 (e) After approving the budget of an independent
16 organization under Subsection (d-1), the [The] commission shall
17 [may] authorize the [an independent] organization [that is
18 certified under this section] to charge [a reasonable and
19 competitively neutral rate] to wholesale buyers and sellers a
20 system administration fee, within a range determined by the
21 commission, that is reasonable and competitively neutral to fund
22 [to cover] the independent organization's approved budget [costs].
23 The commission shall investigate the organization's cost
24 efficiencies, salaries and benefits, and use of debt financing and
25 may require the organization to provide any information needed to
26 effectively evaluate [the organization's budget and] the
27 reasonableness and neutrality of the fee [a rate or proposed rate]

1 or to evaluate the effectiveness or efficiency of the
2 organization. The commission shall work with the organization to
3 establish the detail of information, both current and historical,
4 and the time frames the commission needs to effectively evaluate
5 the fee. The commission shall require the organization to closely
6 match actual revenues generated by the fee and other sources of
7 revenue with revenue necessary to fund the budget, taking into
8 account the effect of a fee change on market participants and
9 consumers, to ensure that the budget year does not end with surplus
10 or insufficient funds. The commission shall require the
11 organization to submit to the commission, on a schedule determined
12 by the commission, reports that compare actual expenditures with
13 budgeted expenditures [a rate or a rate request].

14 (e-1) The review and approval of a proposed budget under
15 Subsection (d-1) or a proceeding to authorize and set the range for
16 the amount of a fee under Subsection (e) is not a contested case for
17 purposes of Chapter 2001, Government Code.

18 SECTION 1.05. Section 39.1515(c), Utilities Code, is
19 amended to read as follows:

20 (c) The independent organization shall use money from the
21 fee [rate] authorized by Section 39.151(e) to pay for the market
22 monitor's activities.

23 SECTION 1.06. Section 39.903(d), Utilities Code, is amended
24 to read as follows:

25 (d) The commission shall annually review and approve system
26 benefit fund accounts, projected revenue requirements, and
27 proposed nonbypassable fees. ~~[The commission shall report to the~~

1 ~~electric utility restructuring legislative oversight committee if~~
2 ~~the system benefit fund fee is insufficient to fund the purposes set~~
3 ~~forth in Subsection (e) to the extent required by this section.]~~

4 SECTION 1.07. Subchapter C, Chapter 52, Utilities Code, is
5 amended by adding Section 52.1035 to read as follows:

6 Sec. 52.1035. RENEWAL OF CERTAIN CERTIFICATES. (a) The
7 commission by rule shall require each holder of a certificate of
8 operating authority and holder of a service provider certificate of
9 operating authority to file with the commission on a one-time or
10 regular basis:

11 (1) the certificate holder's name;
12 (2) the certificate holder's address; and
13 (3) the most recent version of each annual report the
14 commission requires the certificate holder to file under this
15 subtitle.

16 (b) The rules must:

17 (1) require the commission to automatically allow a
18 certificate holder an extension of a filing deadline for the number
19 of days prescribed by the rule, as applicable; and

20 (2) state that the certificate of a holder will not be
21 valid after the last day of the automatic extension period
22 described by Subdivision (1) if the certificate holder does not
23 file information required by the commission under this section by
24 the end of the automatic extension period.

25 (c) A certificate holder whose certificate is no longer
26 valid may obtain a new certificate only by complying with the
27 requirements prescribed for obtaining an original certificate.

1 SECTION 1.08. Section 64.003, Utilities Code, is repealed.

2 SECTION 1.09. The Public Utility Commission of Texas shall
3 adopt rules to implement the filing process required by Section
4 52.1035, Utilities Code, as added by this article, as soon as
5 practicable. The rules must specify whether the commission will
6 require that a holder of a certificate of operating authority or
7 holder of a service provider certificate of operating authority
8 file the information required by Section 52.1035, Utilities Code,
9 as added by this article, once or on a regular basis. Regardless of
10 the frequency of filing required, each certificate holder shall
11 file the information required by Section 52.1035, Utilities Code,
12 as added by this article, not later than January 1, 2014. If the
13 commission requires regular filings, the rules must specify the
14 timing of the subsequent filings.

15 ARTICLE 2. WATER AND SEWER UTILITIES AND OTHER RELATED DUTIES OF
16 THE PUBLIC UTILITY COMMISSION OF TEXAS

17 SECTION 2.01. Section 5.013(a), Water Code, is amended to
18 read as follows:

19 (a) The commission has general jurisdiction over:

20 (1) water and water rights including the issuance of
21 water rights permits, water rights adjudication, cancellation of
22 water rights, and enforcement of water rights;

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

26 (3) the state's water quality program including
27 issuance of permits, enforcement of water quality rules, standards,

1 orders, and permits, and water quality planning;

2 (4) the determination of the feasibility of certain
3 federal projects;

4 (5) the adoption and enforcement of rules and
5 performance of other acts relating to the safe construction,
6 maintenance, and removal of dams;

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

9 (7) the administration of the state's program relating
10 to inactive hazardous substance, pollutant, and contaminant
11 disposal facilities;

12 (8) the administration of a portion of the state's
13 injection well program;

14 (9) the administration of the state's programs
15 involving underground water and water wells and drilled and mined
16 shafts;

17 (10) the state's responsibilities relating to regional
18 waste disposal;

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

21 (12) ~~administration of the state's water rate program~~
22 ~~under Chapter 13 of this code, and~~

23 [~~13~~] any other areas assigned to the commission by
24 this code and other laws of this state.

25 SECTION 2.02. Section 5.311(a), Water Code, is amended to
26 read as follows:

27 (a) The commission may delegate to an administrative law

1 judge of the State Office of Administrative Hearings the
2 responsibility to hear any matter before the commission [~~and to~~
3 ~~issue interlocutory orders related to interim rates under Chapter~~
4 ~~13~~].

5 SECTION 2.03. Section 5.507, Water Code, is amended to read
6 as follows:

7 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
8 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
9 The commission or the Public Utility Commission of Texas may issue
10 an emergency order appointing a willing person to temporarily
11 manage and operate a utility under Section 13.4132. 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 SECTION 2.04. Sections 5.508(a) and (c), Water Code, are
15 amended to read as follows:

16 (a) Notwithstanding the requirements of Section 13.187, the
17 Public Utility Commission of Texas [~~commission~~] may authorize an
18 emergency rate increase for a utility for which a person has been
19 appointed under Section 5.507 or 13.4132 [~~13.412~~] or for which a
20 receiver has been appointed under Section 13.412 [~~13.4132~~] if the
21 increase is necessary to ensure the provision of continuous and
22 adequate services to the utility's customers.

23 (c) Notwithstanding Section 5.505, an order may be issued
24 under this section for a term not to exceed 15 months. The Public
25 Utility Commission of Texas [~~commission~~] shall schedule a hearing
26 to establish a final rate within 15 months after the date on which
27 an emergency rate increase takes effect. The additional revenues

1 collected under an emergency rate increase are subject to refund if
2 the commission finds that the rate increase was larger than
3 necessary to ensure continuous and adequate service.

4 SECTION 2.05. Section 11.002, Water Code, is amended by
5 adding Subdivision (21) to read as follows:

6 (21) "Utility commission" means the Public Utility
7 Commission of Texas.

8 SECTION 2.06. Section 11.041, Water Code, is amended to
9 read as follows:

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

15 (1) that the person [~~he~~] is entitled to receive or use
16 the water;

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

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

22 (4) that the party owning or controlling the water
23 supply fails or refuses to supply the available water to the
24 petitioner, or that the price or rental demanded for the available
25 water is not reasonable and just or is discriminatory.

26 (b) If the petition is accompanied by a deposit of \$25, the
27 executive director of the utility commission shall have a

1 preliminary investigation of the complaint made and determine
2 whether or not there are probable grounds for the complaint.

3 (c) If, after preliminary investigation, the executive
4 director of the utility commission determines that probable grounds
5 exist for the complaint, the utility commission shall enter an
6 order setting a time and place for a hearing on the petition.

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

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

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

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

1 Treasury.

2 SECTION 2.07. Section 12.013, Water Code, is amended to
3 read as follows:

4 Sec. 12.013. RATE-FIXING POWER. (a) The utility
5 commission shall fix reasonable rates for the furnishing of raw or
6 treated water for any purpose mentioned in Chapter 11 or 12 of this
7 code.

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

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

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

25 (e) The utility commission may establish interim rates and
26 compel continuing service during the pendency of any rate
27 proceeding.

1 (f) The utility commission may order a refund or assess
2 additional charges from the date a petition for rate review is
3 received by the utility commission of the difference between the
4 rate actually charged and the rate fixed by the utility commission,
5 plus interest at the statutory rate.

6 ~~[(g) No action or proceeding commenced prior to January 1,~~
7 ~~1977, before the Texas Water Rights Commission shall be affected by~~
8 ~~the enactment of this section.~~

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

11 SECTION 2.08. Section 13.002, Water Code, is amended by
12 amending Subdivisions (2) and (18) and adding Subdivision (22-a) to
13 read as follows:

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

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

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

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

24 (D) any corporation five percent or more of the
25 voting securities of which is owned or controlled directly or
26 indirectly by any person or corporation that owns or controls
27 directly or indirectly five percent or more of the voting

1 securities of any utility or by any person or corporation in any
2 chain of successive ownership of five percent of those utility
3 securities;

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

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

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

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

26 (22-a) "Utility commission" means the Public Utility
27 Commission of Texas.

1 SECTION 2.09. Section 13.004, Water Code, is amended to
2 read as follows:

3 Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER
4 CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a)
5 Notwithstanding any other law, the utility commission has the same
6 jurisdiction over a water supply or sewer service corporation that
7 the utility commission has under this chapter over a water and sewer
8 utility if the utility commission finds that the water supply or
9 sewer service corporation:

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

12 (2) is operating in a manner that does not comply with
13 the requirements for classifications as a nonprofit water supply or
14 sewer service corporation prescribed by Sections 13.002(11) and
15 (24).

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

20 SECTION 2.10. Section 13.011, Water Code, is amended to
21 read as follows:

22 Sec. 13.011. EMPLOYEES. (a) The executive director of the
23 utility commission and the executive director of the commission,
24 subject to approval, as applicable, by the utility commission or
25 the commission, shall employ any engineering, accounting, and
26 administrative personnel necessary to carry out each agency's
27 powers and duties under this chapter.

1 (b) The executive director and the commission's staff are
2 responsible for the gathering of information relating to all
3 matters within the jurisdiction of the commission under this
4 subchapter. The executive director of the utility commission and
5 the utility commission's staff are responsible for the gathering of
6 information relating to all matters within the jurisdiction of the
7 utility commission under this subchapter. The duties of the
8 respective executive directors and staffs [~~director and the staff~~]
9 include:

10 (1) accumulation of evidence and other information
11 from water and sewer utilities, ~~and~~ from the agency and governing
12 body, [~~commission and the board~~] and from other sources for the
13 purposes specified by this chapter;

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

16 (3) conducting investigations of water and sewer
17 utilities under the jurisdiction of the agency [~~commission~~];

18 (4) preparation of recommendations that the agency
19 [~~commission~~] undertake an investigation of any matter within its
20 jurisdiction;

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

23 (6) protection and representation of the public
24 interest [~~together with the public interest advocate,~~] before the
25 agency [~~commission~~]; and

26 (7) other activities that are reasonably necessary to
27 enable the executive director and the staff to perform their

1 duties.

2 SECTION 2.11. Section 13.014, Water Code, is amended to
3 read as follows:

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

8 SECTION 2.12. Subchapter B, Chapter 13, Water Code, is
9 amended by adding Section 13.017 to read as follows:

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

13 (b) The office represents the interests of residential and
14 small commercial consumers under this chapter. The office:

15 (1) shall assess the effect of utility rate changes
16 and other regulatory actions on residential consumers in this
17 state;

18 (2) shall advocate in the office's own name a position
19 determined by the counsellor to be most advantageous to a
20 substantial number of residential consumers;

21 (3) may appear or intervene, as a party or otherwise,
22 as a matter of right on behalf of:

23 (A) residential consumers, as a class, in any
24 proceeding before the utility commission, including an alternative
25 dispute resolution proceeding; and

26 (B) small commercial consumers, as a class, in
27 any proceeding in which the counsellor determines that small

1 commercial consumers are in need of representation, including an
2 alternative dispute resolution proceeding;

3 (4) may initiate or intervene as a matter of right or
4 otherwise appear in a judicial proceeding:

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

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

12 (5) is entitled to the same access as a party, other
13 than utility commission staff, to records gathered by the utility
14 commission under Section 13.133;

15 (6) is entitled to discovery of any nonprivileged
16 matter that is relevant to the subject matter of a proceeding or
17 petition before the utility commission;

18 (7) may represent an individual residential or small
19 commercial consumer with respect to the consumer's disputed
20 complaint concerning retail utility services that is unresolved
21 before the utility commission; and

22 (8) may recommend legislation to the legislature that
23 the office determines would positively affect the interests of
24 residential and small commercial consumers.

25 (c) This section does not limit the authority of the utility
26 commission to represent residential or small commercial consumers.

27 (d) The appearance of the counsellor in a proceeding does

1 not preclude the appearance of other parties on behalf of
2 residential or small commercial consumers. The counsellor may not
3 be grouped with any other party.

4 SECTION 2.13. Section 13.041, Water Code, is amended to
5 read as follows:

6 Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND
7 COMMISSION [~~POWER~~]; RULES; HEARINGS. (a) The utility commission
8 may regulate and supervise the business of each [~~every~~] water and
9 sewer utility within its jurisdiction, including ratemaking and
10 other economic regulation. The commission may regulate water and
11 sewer utilities within its jurisdiction to ensure safe drinking
12 water and environmental protection. The utility commission and the
13 commission [~~and~~] may do all things, whether specifically designated
14 in this chapter or implied in this chapter, necessary and
15 convenient to the exercise of these powers [~~this power~~] and
16 jurisdiction. The utility commission may consult with the
17 commission as necessary in carrying out its duties related to the
18 regulation of water and sewer utilities.

19 (b) The commission and the utility commission shall adopt
20 and enforce rules reasonably required in the exercise of [~~its~~]
21 powers and jurisdiction of each agency, including rules governing
22 practice and procedure before the commission and the utility
23 commission.

24 (c) The commission and the utility commission may call and
25 hold hearings, administer oaths, receive evidence at hearings,
26 issue subpoenas to compel the attendance of witnesses and the
27 production of papers and documents, and make findings of fact and

1 decisions with respect to administering this chapter or the rules,
2 orders, or other actions of the commission or the utility
3 commission.

4 (c-1) In addition to the powers and duties of the State
5 Office of Administrative Hearings under Title 2, Utilities Code,
6 the utility commission may delegate to an administrative law judge
7 of the State Office of Administrative Hearings the responsibility
8 and authority to issue interlocutory orders related to interim
9 rates under this chapter.

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

12 (1) to compel a water or sewer service provider that
13 has obtained or is required to obtain a certificate of public
14 convenience and necessity to provide continuous and adequate water
15 service, sewer service, or both, if the discontinuance of the
16 service is imminent or has occurred because of the service
17 provider's actions or failure to act; and

18 (2) to compel a retail public utility to provide an
19 emergency interconnection with a neighboring retail public utility
20 for the provision of temporary water or sewer service, or both, for
21 not more than 90 days if service discontinuance or serious
22 impairment in service is imminent or has occurred.

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

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

5 (g) The regulatory assessment required by Section 5.701(n)
6 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the
7 utility commission under Section 13.043 [~~of this code~~]. The
8 commission has the authority to enforce payment and collection of
9 the regulatory assessment.

10 SECTION 2.14. Section 13.042, Water Code, is amended to
11 read as follows:

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

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

25 (c) The governing body of a municipality that surrenders its
26 jurisdiction to the utility commission may reinstate its
27 jurisdiction by ordinance at any time after the second anniversary

1 of the date on which the municipality surrendered its jurisdiction
2 to the utility commission, except that the municipality may not
3 reinstate its jurisdiction during the pendency of a rate proceeding
4 before the utility commission. The municipality may not surrender
5 its jurisdiction again until the second anniversary of the date on
6 which the municipality reinstates jurisdiction.

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

10 (e) The utility commission shall have exclusive original
11 jurisdiction over water and sewer utility rates, operations, and
12 services not within the incorporated limits of a municipality
13 exercising exclusive original jurisdiction over those rates,
14 operations, and services as provided in this chapter.

15 (f) This subchapter does not give the utility commission
16 power or jurisdiction to regulate or supervise the rates or service
17 of a utility owned and operated by a municipality, directly or
18 through a municipally owned corporation, within its corporate
19 limits or to affect or limit the power, jurisdiction, or duties of a
20 municipality that regulates land and supervises water and sewer
21 utilities within its corporate limits, except as provided by this
22 code.

23 SECTION 2.15. Sections 13.043(a), (b), (c), (e), (f), (g),
24 (h), and (j), Water Code, are amended to read as follows:

25 (a) Any party to a rate proceeding before the governing body
26 of a municipality may appeal the decision of the governing body to
27 the utility commission. This subsection does not apply to a

1 municipally owned utility. An appeal under this subsection must be
2 initiated within 90 days after the date of notice of the final
3 decision by the governing body by filing a petition for review with
4 the utility commission and by serving copies on all parties to the
5 original rate proceeding. The utility commission shall hear the
6 appeal de novo and shall fix in its final order the rates the
7 governing body should have fixed in the action from which the appeal
8 was taken and may include reasonable expenses incurred in the
9 appeal proceedings. The utility commission may establish the
10 effective date for the utility commission's rates at the original
11 effective date as proposed by the utility provider and may order
12 refunds or allow a surcharge to recover lost revenues. The utility
13 commission may consider only the information that was available to
14 the governing body at the time the governing body made its decision
15 and evidence of reasonable expenses incurred in the appeal
16 proceedings.

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

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

22 (2) a utility under the jurisdiction of a municipality
23 inside the corporate limits of the municipality;

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

26 (4) a district or authority created under Article III,
27 Section 52, or Article XVI, Section 59, of the Texas Constitution

1 that provides water or sewer service to household users; and

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

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

17 (e) In an appeal under Subsection (b) [~~of this section~~], the
18 utility commission shall hear the appeal de novo and shall fix in
19 its final order the rates the governing body should have fixed in
20 the action from which the appeal was taken. The utility commission
21 may establish the effective date for the utility commission's rates
22 at the original effective date as proposed by the service provider,
23 may order refunds or allow a surcharge to recover lost revenues, and
24 may allow recovery of reasonable expenses incurred by the retail
25 public utility in the appeal proceedings. The utility commission
26 may consider only the information that was available to the
27 governing body at the time the governing body made its decision and

1 evidence of reasonable expenses incurred by the retail public
2 utility in the appeal proceedings. The rates established by the
3 utility commission in an appeal under Subsection (b) [~~of this~~
4 ~~section~~] remain in effect until the first anniversary of the
5 effective date proposed by the retail public utility for the rates
6 being appealed or until changed by the service provider, whichever
7 date is later, unless the utility commission determines that a
8 financial hardship exists.

9 (f) A retail public utility that receives water or sewer
10 service from another retail public utility or political subdivision
11 of the state, including an affected county, may appeal to the
12 utility commission a decision of the provider of water or sewer
13 service affecting the amount paid for water or sewer service. An
14 appeal under this subsection must be initiated within 90 days after
15 the date of notice of the decision is received from the provider of
16 water or sewer service by the filing of a petition by the retail
17 public utility.

18 (g) An applicant for service from an affected county or a
19 water supply or sewer service corporation may appeal to the utility
20 commission a decision of the county or water supply or sewer service
21 corporation affecting the amount to be paid to obtain service other
22 than the regular membership or tap fees. In addition to the factors
23 specified under Subsection (j), in an appeal brought under this
24 subsection the utility commission shall determine whether the
25 amount paid by the applicant is consistent with the tariff of the
26 water supply or sewer service corporation and is reasonably related
27 to the cost of installing on-site and off-site facilities to

1 provide service to that applicant. If the utility commission finds
2 the amount charged to be clearly unreasonable, it shall establish
3 the fee to be paid for that applicant. An appeal under this
4 subsection must be initiated within 90 days after the date written
5 notice is provided to the applicant or member of the decision of an
6 affected county or water supply or sewer service corporation
7 relating to the applicant's initial request for that service. A
8 determination made by the utility commission on an appeal under
9 this subsection is binding on all similarly situated applicants for
10 service, and the utility commission may not consider other appeals
11 on the same issue until the applicable provisions of the tariff of
12 the water supply or sewer service corporation are amended.

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

17 (j) In an appeal under this section, the utility commission
18 shall ensure that every rate made, demanded, or received by any
19 retail public utility or by any two or more retail public utilities
20 jointly shall be just and reasonable. Rates shall not be
21 unreasonably preferential, prejudicial, or discriminatory but
22 shall be sufficient, equitable, and consistent in application to
23 each class of customers. The utility commission shall use a
24 methodology that preserves the financial integrity of the retail
25 public utility. For agreements between municipalities the utility
26 commission shall consider the terms of any wholesale water or sewer
27 service agreement in an appellate rate proceeding.

1 SECTION 2.16. Section 13.044(b), Water Code, is amended to
2 read as follows:

3 (b) Notwithstanding the provisions of any resolution,
4 ordinance, or agreement, a district may appeal the rates imposed by
5 the municipality by filing a petition with the utility commission.
6 The utility commission shall hear the appeal de novo and the
7 municipality shall have the burden of proof to establish that the
8 rates are just and reasonable. The utility commission shall fix the
9 rates to be charged by the municipality and the municipality may not
10 increase such rates without the approval of the utility commission.

11 SECTION 2.17. Section 13.046, Water Code, is amended to
12 read as follows:

13 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR
14 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The
15 utility commission by rule shall establish a procedure that allows
16 a retail public utility that takes over the provision of services
17 for a nonfunctioning retail water or sewer utility service provider
18 to charge a reasonable rate for the services provided to the
19 customers of the nonfunctioning system and to bill the customers
20 for the services at that rate immediately to recover service costs.

21 (b) The rules must provide a streamlined process that the
22 retail public utility that takes over the nonfunctioning system may
23 use to apply to the utility commission for a ruling on the
24 reasonableness of the rates the utility is charging under
25 Subsection (a). The process must allow for adequate consideration
26 of costs for interconnection or other costs incurred in making
27 services available and of the costs that may necessarily be

1 incurred to bring the nonfunctioning system into compliance with
2 utility commission and commission rules.

3 (c) The utility commission shall provide a reasonable
4 period for the retail public utility that takes over the
5 nonfunctioning system to bring the nonfunctioning system into
6 compliance with utility commission and commission rules during
7 which the utility commission or the commission may not impose a
8 penalty for any deficiency in the system that is present at the time
9 the utility takes over the nonfunctioning system. The utility
10 commission must consult with the utility before determining the
11 period and may grant an extension of the period for good cause.

12 SECTION 2.18. Section 13.081, Water Code, is amended to
13 read as follows:

14 Sec. 13.081. FRANCHISES. This chapter may not be construed
15 as in any way limiting the rights and powers of a municipality to
16 grant or refuse franchises to use the streets and alleys within its
17 limits and to make the statutory charges for their use, but no
18 provision of any franchise agreement may limit or interfere with
19 any power conferred on the utility commission by this chapter. If a
20 municipality performs regulatory functions under this chapter, it
21 may make such other charges as may be provided in the applicable
22 franchise agreement, together with any other charges permitted by
23 this chapter.

24 SECTION 2.19. Section 13.082, Water Code, is amended to
25 read as follows:

26 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT
27 AREAS. (a) Notwithstanding any other provision of this section,

1 municipalities shall continue to regulate each kind of local
2 utility service inside their boundaries until the utility
3 commission has assumed jurisdiction over the respective utility
4 pursuant to this chapter.

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

16 (c) Notwithstanding any election, the utility commission
17 may consider water and sewer utilities' revenues and return on
18 investment in exempt areas in fixing rates and charges in nonexempt
19 areas and may also exercise the powers conferred necessary to give
20 effect to orders under this chapter for the benefit of nonexempt
21 areas. Likewise, in fixing rates and charges in the exempt area,
22 the governing body may consider water and sewer utilities' revenues
23 and return on investment in nonexempt areas.

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

1 (e) This section does not limit the duty and power of the
2 utility commission to regulate service and rates of municipally
3 regulated water and sewer utilities for service provided to other
4 areas in Texas.

5 SECTION 2.20. Section 13.085, Water Code, is amended to
6 read as follows:

7 Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,
8 the utility commission may advise and assist municipalities and
9 affected counties in connection with questions and proceedings
10 arising under this chapter. This assistance may include aid to
11 municipalities or an affected county in connection with matters
12 pending before the utility commission, the courts, the governing
13 body of any municipality, or the commissioners court of an affected
14 county, including making members of the staff available to them as
15 witnesses and otherwise providing evidence.

16 SECTION 2.21. Section 13.087(c), Water Code, is amended to
17 read as follows:

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

20 SECTION 2.22. Sections 13.131(a), (b), (c), and (e), Water
21 Code, are amended to read as follows:

22 (a) Every water and sewer utility shall keep and render to
23 the regulatory authority in the manner and form prescribed by the
24 utility commission uniform accounts of all business transacted.
25 The utility commission may also prescribe forms of books, accounts,
26 records, and memoranda to be kept by those utilities, including the
27 books, accounts, records, and memoranda of the rendition of and

1 capacity for service as well as the receipts and expenditures of
2 money, and any other forms, records, and memoranda that in the
3 judgment of the utility commission may be necessary to carry out
4 this chapter.

5 (b) In the case of a utility subject to regulation by a
6 federal regulatory agency, compliance with the system of accounts
7 prescribed for the particular class of utilities by that agency may
8 be considered a sufficient compliance with the system prescribed by
9 the utility commission. However, the utility commission may
10 prescribe forms of books, accounts, records, and memoranda covering
11 information in addition to that required by the federal agency. The
12 system of accounts and the forms of books, accounts, records, and
13 memoranda prescribed by the utility commission for a utility or
14 class of utilities may not conflict or be inconsistent with the
15 systems and forms established by a federal agency for that utility
16 or class of utilities.

17 (c) The utility commission shall fix proper and adequate
18 rates and methods of depreciation, amortization, or depletion of
19 the several classes of property of each utility and shall require
20 every utility to carry a proper and adequate depreciation account
21 in accordance with those rates and methods and with any other rules
22 the utility commission prescribes. Rules adopted under this
23 subsection must require the book cost less net salvage of
24 depreciable utility plant retired to be charged in its entirety to
25 the accumulated depreciation account in a manner consistent with
26 accounting treatment of regulated electric and gas utilities in
27 this state. Those rates, methods, and accounts shall be utilized

1 uniformly and consistently throughout the rate-setting and appeal
2 proceedings.

3 (e) Every utility is required to keep and render its books,
4 accounts, records, and memoranda accurately and faithfully in the
5 manner and form prescribed by the utility commission and to comply
6 with all directions of the regulatory authority relating to those
7 books, accounts, records, and memoranda. The regulatory authority
8 may require the examination and audit of all accounts.

9 SECTION 2.23. Section 13.132, Water Code, is amended to
10 read as follows:

11 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility
12 commission may:

13 (1) require that water and sewer utilities report to
14 it any information relating to themselves and affiliated interests
15 both inside and outside this state that it considers useful in the
16 administration of this chapter;

17 (2) establish forms for all reports;

18 (3) determine the time for reports and the frequency
19 with which any reports are to be made;

20 (4) require that any reports be made under oath;

21 (5) require that a copy of any contract or arrangement
22 between any utility and any affiliated interest be filed with it and
23 require that such a contract or arrangement that is not in writing
24 be reduced to writing;

25 (6) require that a copy of any report filed with any
26 federal agency or any governmental agency or body of any other state
27 be filed with it; and

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

7 (b) On the request of the governing body of any
8 municipality, the utility commission may provide sufficient staff
9 members to advise and consult with the municipality on any pending
10 matter.

11 SECTION 2.24. Section 13.1325, Water Code, is amended to
12 read as follows:

13 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On
14 request, the utility commission [~~state agency with jurisdiction~~
15 ~~over rates charged by water and sewer utilities~~] shall provide, at a
16 reasonable cost, electronic copies of all information provided to
17 the utility commission [~~agency~~] under Sections 13.016, 13.043, and
18 13.187 to the extent that the information is available and is not
19 confidential. Copies of all information provided to the utility
20 commission [~~agency~~] shall be provided to the Office of Public
21 Utility Counsel, on request, at no cost to the office.

22 SECTION 2.25. Section 13.133(b), Water Code, is amended to
23 read as follows:

24 (b) The regulatory authority may require, by order or
25 subpoena served on any utility, the production within this state at
26 the time and place it may designate of any books, accounts, papers,
27 or records kept by that utility outside the state or verified copies

1 of them if the regulatory authority [~~commission~~] so orders. A
2 utility failing or refusing to comply with such an order or subpoena
3 violates this chapter.

4 SECTION 2.26. Sections 13.136(b) and (c), Water Code, are
5 amended to read as follows:

6 (b) Each utility annually shall file a service and financial
7 report in a form and at times specified by utility commission rule.

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

17 SECTION 2.27. Section 13.137, Water Code, is amended to
18 read as follows:

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

21 (1) make available and notify its customers of a
22 business location where its customers may make payments to prevent
23 disconnection of or to restore service:

24 (A) in each county in which the utility provides
25 service; or

26 (B) not more than 20 miles from the residence of
27 any residential customer if there is no location to receive

1 payments in the county; and

2 (2) have an office in a county of this state or in the
3 immediate area in which its property or some part of its property is
4 located in which it shall keep all books, accounts, records, and
5 memoranda required by the utility commission to be kept in this
6 state.

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

14 (c) Books, accounts, records, or memoranda required by the
15 regulatory authority to be kept in the state may not be removed from
16 the state, except on conditions prescribed by the utility
17 commission.

18 SECTION 2.28. Section 13.139(b), Water Code, is amended to
19 read as follows:

20 (b) The governing body of a municipality, as the regulatory
21 authority for public utilities operating within its corporate
22 limits, and the utility commission or the commission as the
23 regulatory authority for public utilities operating outside the
24 corporate limits of any municipality, after reasonable notice and
25 hearing on its own motion, may:

26 (1) ascertain and fix just and reasonable standards,
27 classifications, regulations, service rules, minimum service

1 standards or practices to be observed and followed with respect to
2 the service to be furnished;

3 (2) ascertain and fix adequate and reasonable
4 standards for the measurement of the quantity, quality, pressure,
5 or other condition pertaining to the supply of the service;

6 (3) prescribe reasonable regulations for the
7 examination and testing of the service and for the measurement of
8 service; and

9 (4) establish or approve reasonable rules,
10 regulations, specifications, and standards to secure the accuracy
11 of all meters, instruments, and equipment used for the measurement
12 of any utility service.

13 SECTION 2.29. Section 13.1395, Water Code, is amended by
14 adding Subsection (m) to read as follows:

15 (m) The commission shall coordinate with the utility
16 commission in the administration of this section.

17 SECTION 2.30. Sections 13.1396(b), (c), and (f), Water
18 Code, are amended to read as follows:

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

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

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

1 (c) Each affected utility shall submit to the utility
2 commission, each electric utility that provides transmission and
3 distribution service to the affected utility, each retail electric
4 provider that sells electric power to the affected utility, the
5 office of emergency management of each county in which the utility
6 has water and wastewater facilities that qualify for critical load
7 status under rules adopted by the utility commission [~~Public~~
8 ~~Utility Commission of Texas, the Public Utility Commission of~~
9 ~~Texas~~], and the division of emergency management of the governor:

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

13 (2) emergency contact information for the affected
14 utility, including:

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

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

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

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

25 SECTION 2.31. Section 13.142(b), Water Code, is amended to
26 read as follows:

27 (b) The utility commission shall adopt rules concerning

1 payment of utility bills that are consistent with Chapter 2251,
2 Government Code.

3 SECTION 2.32. Section 13.144, Water Code, is amended to
4 read as follows:

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

19 SECTION 2.33. Section 13.147(a), Water Code, is amended to
20 read as follows:

21 (a) A retail public utility providing water service may
22 contract with a retail public utility providing sewer service to
23 bill and collect the sewer service provider's fees and payments as
24 part of a consolidated process with the billing and collection of
25 the water service provider's fees and payments. The water service
26 provider may provide that service only for customers who are served
27 by both providers in an area covered by both providers'

1 certificates of public convenience and necessity. If the water
2 service provider refuses to enter into a contract under this
3 section or if the water service provider and sewer service provider
4 cannot agree on the terms of a contract, the sewer service provider
5 may petition the utility commission to issue an order requiring the
6 water service provider to provide that service.

7 SECTION 2.34. Section 13.181(b), Water Code, is amended to
8 read as follows:

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

25 SECTION 2.35. Sections 13.182(c) and (d), Water Code, are
26 amended to read as follows:

27 (c) For ratemaking purposes, the utility commission may

1 treat two or more municipalities served by a utility as a single
2 class wherever the utility commission considers that treatment to
3 be appropriate.

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

8 SECTION 2.36. Section 13.183(d), Water Code, is amended to
9 read as follows:

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

14 SECTION 2.37. Section 13.184(a), Water Code, is amended to
15 read as follows:

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

1 on the invested capital used and useful in rendering service to the
2 public.

3 SECTION 2.38. Sections 13.187(d), (k), and (o), Water Code,
4 are amended to read as follows:

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

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

25 (1) 90 days by a local regulatory authority; or

26 (2) 150 days by the utility commission.

27 (o) If a regulatory authority other than the utility

1 commission establishes interim rates or an escrow account, the
2 regulatory authority must make a final determination on the rates
3 not later than the first anniversary of the effective date of the
4 interim rates or escrowed rates or the rates are automatically
5 approved as requested by the utility.

6 SECTION 2.39. Section 13.188(a), Water Code, is amended to
7 read as follows:

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

18 SECTION 2.40. Sections 13.241(a), (d), and (e), Water Code,
19 are amended to read as follows:

20 (a) In determining whether to grant or amend a certificate
21 of public convenience and necessity, the utility commission shall
22 ensure that the applicant possesses the financial, managerial, and
23 technical capability to provide continuous and adequate service.

24 (d) Before the utility commission grants a new certificate
25 of convenience and necessity for an area which would require
26 construction of a physically separate water or sewer system, the
27 applicant must demonstrate to the utility commission that

1 regionalization or consolidation with another retail public
2 utility is not economically feasible.

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

13 SECTION 2.41. Sections 13.242(a) and (c), Water Code, are
14 amended to read as follows:

15 (a) Unless otherwise specified, a utility, a utility
16 operated by an affected county, or a water supply or sewer service
17 corporation may not in any way render retail water or sewer utility
18 service directly or indirectly to the public without first having
19 obtained from the utility commission a certificate that the present
20 or future public convenience and necessity will require that
21 installation, operation, or extension, and except as otherwise
22 provided by this subchapter, a retail public utility may not
23 furnish, make available, render, or extend retail water or sewer
24 utility service to any area to which retail water or sewer utility
25 service is being lawfully furnished by another retail public
26 utility without first having obtained a certificate of public
27 convenience and necessity that includes the area in which the

1 consuming facility is located.

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

10 SECTION 2.42. Section 13.244, Water Code, is amended to
11 read as follows:

12 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;
13 EVIDENCE AND CONSENT. (a) To obtain a certificate of public
14 convenience and necessity or an amendment to a certificate, a
15 public utility or water supply or sewer service corporation shall
16 submit to the utility commission an application for a certificate
17 or for an amendment as provided by this section.

18 (b) Each public utility and water supply or sewer service
19 corporation shall file with the utility commission a map or maps
20 showing all its facilities and illustrating separately facilities
21 for production, transmission, and distribution of its services, and
22 each certificated retail public utility shall file with the utility
23 commission a map or maps showing any facilities, customers, or area
24 currently being served outside its certificated areas.

25 (c) Each applicant for a certificate or for an amendment
26 shall file with the utility commission evidence required by the
27 utility commission to show that the applicant has received the

1 required consent, franchise, or permit of the proper municipality
2 or other public authority.

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

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

6 (A) a metes and bounds survey certified by a
7 licensed state land surveyor or a registered professional land
8 surveyor;

9 (B) the Texas State Plane Coordinate System;

10 (C) verifiable landmarks, including a road,
11 creek, or railroad line; or

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

14 (2) a description of any requests for service in the
15 proposed service area;

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

19 (4) a description of the sources of funding for all
20 facilities;

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

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

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

27 (A) at least 50 acres; and

1 (B) wholly or partially located within the
2 proposed service area; and

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

4 SECTION 2.43. Sections 13.245(b), (c), (c-1), (c-2), (c-3),
5 and (e), Water Code, are amended to read as follows:

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

15 (c) If a municipality has not consented under Subsection (b)
16 before the 180th day after the date the municipality receives the
17 retail public utility's application, the utility commission shall
18 grant the certificate of public convenience and necessity without
19 the consent of the municipality if the utility commission finds
20 that the municipality:

21 (1) does not have the ability to provide service; or

22 (2) has failed to make a good faith effort to provide
23 service on reasonable terms and conditions.

24 (c-1) If a municipality has not consented under Subsection
25 (b) before the 180th day after the date a landowner or a retail
26 public utility submits to the municipality a formal request for
27 service according to the municipality's application requirements

1 and standards for facilities on the same or substantially similar
2 terms as provided by the retail public utility's application to the
3 utility commission, including a capital improvements plan required
4 by Section 13.244(d)(3) or a subdivision plat, the utility
5 commission may grant the certificate of public convenience and
6 necessity without the consent of the municipality if:

7 (1) the utility commission makes the findings required
8 by Subsection (c);

9 (2) the municipality has not entered into a binding
10 commitment to serve the area that is the subject of the retail
11 public utility's application to the utility commission before the
12 180th day after the date the formal request was made; and

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

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

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

19 (c-2) If a municipality refuses to provide service in the
20 proposed service area, as evidenced by a formal vote of the
21 municipality's governing body or an official notification from the
22 municipality, the utility commission is not required to make the
23 findings otherwise required by this section and may grant the
24 certificate of public convenience and necessity to the retail
25 public utility at any time after the date of the formal vote or
26 receipt of the official notification.

27 (c-3) The utility commission must include as a condition of

1 a certificate of public convenience and necessity granted under
2 Subsection (c-1) or (c-2) that all water and sewer facilities be
3 designed and constructed in accordance with the municipality's
4 standards for water and sewer facilities.

5 (e) If the utility commission makes a decision under
6 Subsection (d) regarding the grant of a certificate of public
7 convenience and necessity without the consent of the municipality,
8 the municipality or the retail public utility may appeal the
9 decision to the appropriate state district court. The court shall
10 hear the petition within 120 days after the date the petition is
11 filed. On final disposition, the court may award reasonable fees to
12 the prevailing party.

13 SECTION 2.44. Sections 13.2451(b) and (c), Water Code, are
14 amended to read as follows:

15 (b) The utility commission may not extend a municipality's
16 certificate of public convenience and necessity beyond its
17 extraterritorial jurisdiction if an owner of land that is located
18 wholly or partly outside the extraterritorial jurisdiction elects
19 to exclude some or all of the landowner's property within a proposed
20 service area in accordance with Section 13.246(h). This subsection
21 does not apply to a transfer of a certificate as approved by the
22 utility commission.

23 (c) The utility commission, after notice to the
24 municipality and an opportunity for a hearing, may decertify an
25 area outside a municipality's extraterritorial jurisdiction if the
26 municipality does not provide service to the area on or before the
27 fifth anniversary of the date the certificate of public convenience

1 and necessity was granted for the area. This subsection does not
2 apply to a certificate of public convenience and necessity for an
3 area:

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

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

8 SECTION 2.45. Section 13.246, Water Code, is amended to
9 read as follows:

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

20 (a-1) Except as otherwise provided by this subsection, in
21 addition to the notice required by Subsection (a), the utility
22 commission shall require notice to be mailed to each owner of a
23 tract of land that is at least 25 acres and is wholly or partially
24 included in the area proposed to be certified. Notice required
25 under this subsection must be mailed by first class mail to the
26 owner of the tract according to the most current tax appraisal rolls
27 of the applicable central appraisal district at the time the

1 utility commission received the application for the certificate or
2 amendment. Good faith efforts to comply with the requirements of
3 this subsection shall be considered adequate notice to landowners.
4 Notice under this subsection is not required for a matter filed with
5 the utility commission or the commission under:

6 (1) Section 13.248 or 13.255; or

7 (2) Chapter 65.

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

18 (c) Certificates of public convenience and necessity and
19 amendments to certificates shall be granted by the utility
20 commission on a nondiscriminatory basis after consideration by the
21 utility commission of:

22 (1) the adequacy of service currently provided to the
23 requested area;

24 (2) the need for additional service in the requested
25 area, including whether any landowners, prospective landowners,
26 tenants, or residents have requested service;

27 (3) the effect of the granting of a certificate or of

1 an amendment on the recipient of the certificate or amendment, on
2 the landowners in the area, and on any retail public utility of the
3 same kind already serving the proximate area;

4 (4) the ability of the applicant to provide adequate
5 service, including meeting the standards of the commission, taking
6 into consideration the current and projected density and land use
7 of the area;

8 (5) the feasibility of obtaining service from an
9 adjacent retail public utility;

10 (6) the financial ability of the applicant to pay for
11 the facilities necessary to provide continuous and adequate service
12 and the financial stability of the applicant, including, if
13 applicable, the adequacy of the applicant's debt-equity ratio;

14 (7) environmental integrity;

15 (8) the probable improvement of service or lowering of
16 cost to consumers in that area resulting from the granting of the
17 certificate or amendment; and

18 (9) the effect on the land to be included in the
19 certificated area.

20 (d) The utility commission may require an applicant for a
21 certificate or for an amendment to provide a bond or other financial
22 assurance in a form and amount specified by the utility commission
23 to ensure that continuous and adequate utility service is provided.

24 (e) Where applicable, in addition to the other factors in
25 this section the utility commission shall consider the efforts of
26 the applicant:

27 (1) to extend service to any economically distressed

1 areas located within the service areas certificated to the
2 applicant; and

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

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

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

15 (h) Except as provided by Subsection (i), a landowner who
16 owns a tract of land that is at least 25 acres and that is wholly or
17 partially located within the proposed service area may elect to
18 exclude some or all of the landowner's property from the proposed
19 service area by providing written notice to the utility commission
20 before the 30th day after the date the landowner receives notice of
21 a new application for a certificate of public convenience and
22 necessity or for an amendment to an existing certificate of public
23 convenience and necessity. The landowner's election is effective
24 without a further hearing or other process by the utility
25 commission. If a landowner makes an election under this
26 subsection, the application shall be modified so that the electing
27 landowner's property is not included in the proposed service area.

1 An applicant for a certificate of public convenience and necessity
2 that has land removed from its proposed certificated service area
3 because of a landowner's election under this subsection may not be
4 required to provide service to the removed land for any reason,
5 including the violation of law or utility commission or commission
6 rules by the water or sewer system of another person.

7 (i) A landowner is not entitled to make an election under
8 Subsection (h) but is entitled to contest the inclusion of the
9 landowner's property in the proposed service area at a hearing held
10 by the utility commission regarding the application if the proposed
11 service area is located within the boundaries or extraterritorial
12 jurisdiction of a municipality with a population of more than
13 500,000 and the municipality or a utility owned by the municipality
14 is the applicant.

15 SECTION 2.46. Section 13.247(a), Water Code, is amended to
16 read as follows:

17 (a) If an area is within the boundaries of a municipality,
18 all retail public utilities certified or entitled to certification
19 under this chapter to provide service or operate facilities in that
20 area may continue and extend service in its area of public
21 convenience and necessity within the area pursuant to the rights
22 granted by its certificate and this chapter, unless the
23 municipality exercises its power of eminent domain to acquire the
24 property of the retail public utility under Subsection (d). Except
25 as provided by Section 13.255, a municipally owned or operated
26 utility may not provide retail water and sewer utility service
27 within the area certificated to another retail public utility

1 without first having obtained from the utility commission a
2 certificate of public convenience and necessity that includes the
3 areas to be served.

4 SECTION 2.47. Section 13.248, Water Code, is amended to
5 read as follows:

6 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts
7 between retail public utilities designating areas to be served and
8 customers to be served by those retail public utilities, when
9 approved by the utility commission after public notice and hearing,
10 are valid and enforceable and are incorporated into the appropriate
11 areas of public convenience and necessity.

12 SECTION 2.48. Sections 13.250(b), (c), and (e), Water Code,
13 are amended to read as follows:

14 (b) Unless the utility commission issues a certificate that
15 neither the present nor future convenience and necessity will be
16 adversely affected, the holder of a certificate or a person who
17 possesses facilities used to provide utility service shall not
18 discontinue, reduce, or impair service to a certified service area
19 or part of a certified service area except for:

20 (1) nonpayment of charges for services provided by the
21 certificate holder or a person who possesses facilities used to
22 provide utility service;

23 (2) nonpayment of charges for sewer service provided
24 by another retail public utility under an agreement between the
25 retail public utility and the certificate holder or a person who
26 possesses facilities used to provide utility service or under a
27 utility commission-ordered arrangement between the two service

1 providers;

2 (3) nonuse; or

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

5 (c) Any discontinuance, reduction, or impairment of
6 service, whether with or without approval of the utility
7 commission, shall be in conformity with and subject to conditions,
8 restrictions, and limitations that the utility commission
9 prescribes.

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

13 SECTION 2.49. Section 13.2502(d), Water Code, is amended to
14 read as follows:

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

17 SECTION 2.50. Section 13.251, Water Code, is amended to
18 read as follows:

19 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.
20 Except as provided by Section 13.255 [~~of this code~~], a utility or a
21 water supply or sewer service corporation may not sell, assign, or
22 lease a certificate of public convenience and necessity or any
23 right obtained under a certificate unless the commission has
24 determined that the purchaser, assignee, or lessee is capable of
25 rendering adequate and continuous service to every consumer within
26 the certified area, after considering the factors under Section
27 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be

1 on the conditions prescribed by the utility commission.

2 SECTION 2.51. Section 13.252, Water Code, is amended to
3 read as follows:

4 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.

5 If a retail public utility in constructing or extending a line,
6 plant, or system interferes or attempts to interfere with the
7 operation of a line, plant, or system of any other retail public
8 utility, or furnishes, makes available, renders, or extends retail
9 water or sewer utility service to any portion of the service area of
10 another retail public utility that has been granted or is not
11 required to possess a certificate of public convenience and
12 necessity, the utility commission may issue an order prohibiting
13 the construction, extension, or provision of service or prescribing
14 terms and conditions for locating the line, plant, or system
15 affected or for the provision of the service.

16 SECTION 2.52. Section 13.253, Water Code, is amended to
17 read as follows:

18 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING
19 SERVICE. (a) After notice and hearing, the utility commission or
20 the commission may:

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

26 (A) provide specified improvements in its
27 service in a defined area if service in that area is inadequate or

1 is substantially inferior to service in a comparable area and it is
2 reasonable to require the retail public utility to provide the
3 improved service; or

4 (B) develop, implement, and follow financial,
5 managerial, and technical practices that are acceptable to the
6 utility commission to ensure that continuous and adequate service
7 is provided to any areas currently certificated to the retail
8 public utility if the retail public utility has not provided
9 continuous and adequate service to any of those areas and, for a
10 utility, to provide financial assurance of the utility's ability to
11 operate the system in accordance with applicable laws and rules, in
12 the form of a bond or other financial assurance in a form and amount
13 specified by the utility commission;

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

17 (3) order a public utility or water supply or sewer
18 service corporation that has not demonstrated that it can provide
19 continuous and adequate service from its drinking water source or
20 sewer treatment facility to obtain service sufficient to meet its
21 obligation to provide continuous and adequate service on at least a
22 wholesale basis from another consenting utility service provider;
23 or

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

26 (b) If the utility commission has reason to believe that
27 improvements and repairs to a water or sewer service system are

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

19 SECTION 2.53. Sections 13.254(a), (a-1), (a-2), (a-3),
20 (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h),
21 Water Code, are amended to read as follows:

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

26 (1) the certificate holder has never provided, is no
27 longer providing, is incapable of providing, or has failed to

1 provide continuous and adequate service in the area, or part of the
2 area, covered by the certificate;

3 (2) in an affected county as defined in Section
4 16.341, the cost of providing service by the certificate holder is
5 so prohibitively expensive as to constitute denial of service,
6 provided that, for commercial developments or for residential
7 developments started after September 1, 1997, in an affected county
8 as defined in Section 16.341, the fact that the cost of obtaining
9 service from the currently certificated retail public utility makes
10 the development economically unfeasible does not render such cost
11 prohibitively expensive in the absence of other relevant factors;

12 (3) the certificate holder has agreed in writing to
13 allow another retail public utility to provide service within its
14 service area, except for an interim period, without amending its
15 certificate; or

16 (4) the certificate holder has failed to file a cease
17 and desist action pursuant to Section 13.252 within 180 days of the
18 date that it became aware that another retail public utility was
19 providing service within its service area, unless the certificate
20 holder demonstrates good cause for its failure to file such action
21 within the 180 days.

22 (a-1) As an alternative to decertification under Subsection
23 (a), the owner of a tract of land that is at least 50 acres and that
24 is not in a platted subdivision actually receiving water or sewer
25 service may petition the utility commission under this subsection
26 for expedited release of the area from a certificate of public
27 convenience and necessity so that the area may receive service from

1 another retail public utility. The fact that a certificate holder
2 is a borrower under a federal loan program is not a bar to a request
3 under this subsection for the release of the petitioner's land and
4 the receipt of services from an alternative provider. On the day
5 the petitioner submits the petition to the utility commission, the
6 petitioner shall send, via certified mail, a copy of the petition to
7 the certificate holder, who may submit information to the utility
8 commission to controvert information submitted by the petitioner.
9 The petitioner must demonstrate that:

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

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

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

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

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

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

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

27 (2) the certificate holder has been allowed at least

1 90 calendar days to review and respond to the written request and
2 the information it contains;

3 (3) the certificate holder:

4 (A) has refused to provide the service;

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

11 (C) conditions the provision of service on the
12 payment of costs not properly allocable directly to the
13 petitioner's service request, as determined by the utility
14 commission; and

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

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

26 (1) within the boundaries of any municipality or the
27 extraterritorial jurisdiction of a municipality with a population

1 of more than 500,000 and the municipality or retail public utility
2 owned by the municipality is the holder of the certificate; or

3 (2) in a platted subdivision actually receiving water
4 or sewer service.

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

19 (a-4) Chapter 2001, Government Code, does not apply to any
20 petition filed under Subsection (a-1). The decision of the utility
21 commission on the petition is final after any reconsideration
22 authorized by the utility commission's rules and may not be
23 appealed.

24 (a-6) The utility commission shall grant a petition
25 received under Subsection (a-5) not later than the 60th day after
26 the date the landowner files the petition. The utility commission
27 may not deny a petition received under Subsection (a-5) based on the

1 fact that a certificate holder is a borrower under a federal loan
2 program. The utility commission may require an award of
3 compensation by the petitioner to a decertified retail public
4 utility that is the subject of a petition filed under Subsection
5 (a-5) as otherwise provided by this section.

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

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

19 (c) If the certificate of any retail public utility is
20 revoked or amended, the utility commission may require one or more
21 retail public utilities with their consent to provide service in
22 the area in question. The order of the utility commission shall not
23 be effective to transfer property.

24 (d) A retail public utility may not in any way render retail
25 water or sewer service directly or indirectly to the public in an
26 area that has been decertified under this section without providing
27 compensation for any property that the utility commission

1 determines is rendered useless or valueless to the decertified
2 retail public utility as a result of the decertification.

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

12 (f) The monetary amount shall be determined by a qualified
13 individual or firm serving as independent appraiser agreed upon by
14 the decertified retail public utility and the retail public utility
15 seeking to serve the area. The determination of compensation by the
16 independent appraiser shall be binding on the utility commission.
17 The costs of the independent appraiser shall be borne by the retail
18 public utility seeking to serve the area.

19 (g) For the purpose of implementing this section, the value
20 of real property owned and utilized by the retail public utility for
21 its facilities shall be determined according to the standards set
22 forth in Chapter 21, Property Code, governing actions in eminent
23 domain and the value of personal property shall be determined
24 according to the factors in this subsection. The factors ensuring
25 that the compensation to a retail public utility is just and
26 adequate shall include: the amount of the retail public utility's
27 debt allocable for service to the area in question; the value of the

1 service facilities of the retail public utility located within the
2 area in question; the amount of any expenditures for planning,
3 design, or construction of service facilities that are allocable to
4 service to the area in question; the amount of the retail public
5 utility's contractual obligations allocable to the area in
6 question; any demonstrated impairment of service or increase of
7 cost to consumers of the retail public utility remaining after the
8 decertification; the impact on future revenues lost from existing
9 customers; necessary and reasonable legal expenses and
10 professional fees; and other relevant factors. The utility
11 commission shall adopt rules governing the evaluation of these
12 factors.

13 (g-1) If the retail public utilities cannot agree on an
14 independent appraiser within 10 calendar days after the date on
15 which the retail public utility notifies the utility commission of
16 its intent to provide service to the decertified area, each retail
17 public utility shall engage its own appraiser at its own expense,
18 and each appraisal shall be submitted to the utility commission
19 within 60 calendar days. After receiving the appraisals, the
20 utility commission shall appoint a third appraiser who shall make a
21 determination of the compensation within 30 days. The
22 determination may not be less than the lower appraisal or more than
23 the higher appraisal. Each retail public utility shall pay half the
24 cost of the third appraisal.

25 (h) A certificate holder that has land removed from its
26 certificated service area in accordance with this section may not
27 be required, after the land is removed, to provide service to the

1 removed land for any reason, including the violation of law or
2 utility commission or commission rules by a water or sewer system of
3 another person.

4 SECTION 2.54. Sections 13.255(a), (b), (c), (d), (e),
5 (g-1), (k), (l), and (m), Water Code, are amended to read as
6 follows:

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

27 (b) If an agreement is not executed within 180 days after

1 the municipality, in writing, notifies the retail public utility of
2 its intent to provide service to the incorporated or annexed area,
3 and if the municipality desires and intends to provide retail
4 utility service to the area, the municipality, prior to providing
5 service to the area, shall file an application with the utility
6 commission to grant single certification to the municipally owned
7 water or sewer utility or to a franchised utility. If an
8 application for single certification is filed, the utility
9 commission shall fix a time and place for a hearing and give notice
10 of the hearing to the municipality and franchised utility, if any,
11 and notice of the application and hearing to the retail public
12 utility.

13 (c) The utility commission shall grant single certification
14 to the municipality. The utility commission shall also determine
15 whether single certification as requested by the municipality would
16 result in property of a retail public utility being rendered
17 useless or valueless to the retail public utility, and shall
18 determine in its order the monetary amount that is adequate and just
19 to compensate the retail public utility for such property. If the
20 municipality in its application has requested the transfer of
21 specified property of the retail public utility to the municipality
22 or to a franchised utility, the utility commission shall also
23 determine in its order the adequate and just compensation to be paid
24 for such property pursuant to the provisions of this section,
25 including an award for damages to property remaining in the
26 ownership of the retail public utility after single certification.
27 The order of the utility commission shall not be effective to

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

19 (d) In the event the final order of the utility commission
20 is not appealed within 30 days, the municipality may request the
21 district court of Travis County to enter a judgment consistent with
22 the order of the utility commission. In such event, the court shall
23 render a judgment that:

24 (1) transfers to the municipally owned utility or
25 franchised utility title to property to be transferred to the
26 municipally owned utility or franchised utility as delineated by
27 the utility commission's final order and property determined by the

1 utility commission to be rendered useless or valueless by the
2 granting of single certification; and

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

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

14 (1) transfers to the municipally owned utility or
15 franchised utility title to property requested by the municipality
16 to be transferred to the municipally owned utility or franchised
17 utility and located within the singly certificated area and
18 property determined by the court or jury to be rendered useless or
19 valueless by the granting of single certification; and

20 (2) orders payment in accordance with Subsection (g)
21 [~~of this section~~] to the retail public utility of adequate and just
22 compensation for the property transferred and for the property
23 damaged as determined by the court or jury.

24 (g-1) The utility commission shall adopt rules governing
25 the evaluation of the factors to be considered in determining the
26 monetary compensation under Subsection (g). The utility commission
27 by rule shall adopt procedures to ensure that the total

1 compensation to be paid to a retail public utility under Subsection
2 (g) is determined not later than the 90th calendar day after the
3 date on which the utility commission determines that the
4 municipality's application is administratively complete.

5 (k) The following conditions apply when a municipality or
6 franchised utility makes an application to acquire the service area
7 or facilities of a retail public utility described in Subsection
8 (j)(2):

9 (1) the utility commission or court must determine
10 that the service provided by the retail public utility is
11 substandard or its rates are unreasonable in view of the reasonable
12 expenses of the utility;

13 (2) if the municipality abandons its application, the
14 court or the utility commission is authorized to award to the retail
15 public utility its reasonable expenses related to the proceeding
16 hereunder, including attorney fees; and

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

20 (1) For an area incorporated by a municipality, the
21 compensation provided under Subsection (g) shall be determined by a
22 qualified individual or firm to serve as independent appraiser, who
23 shall be selected by the affected retail public utility, and the
24 costs of the appraiser shall be paid by the municipality. For an
25 area annexed by a municipality, the compensation provided under
26 Subsection (g) shall be determined by a qualified individual or
27 firm to which the municipality and the retail public utility agree

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

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

26 SECTION 2.55. Section 13.2551, Water Code, is amended to
27 read as follows:

1 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
2 condition to decertification or single certification under Section
3 13.254 or 13.255, and on request by an affected retail public
4 utility, the utility commission may order:

5 (1) the retail public utility seeking to provide
6 service to a decertified area to serve the entire service area of
7 the retail public utility that is being decertified; and

8 (2) the transfer of the entire certificate of public
9 convenience and necessity of a partially decertified retail public
10 utility to the retail public utility seeking to provide service to
11 the decertified area.

12 (b) The utility commission shall order service to the entire
13 area under Subsection (a) if the utility commission finds that the
14 decertified retail public utility will be unable to provide
15 continuous and adequate service at an affordable cost to the
16 remaining customers.

17 (c) The utility commission shall require the retail public
18 utility seeking to provide service to the decertified area to
19 provide continuous and adequate service to the remaining customers
20 at a cost comparable to the cost of that service to its other
21 customers and shall establish the terms under which the service
22 must be provided. The terms may include:

23 (1) transferring debt and other contract obligations;

24 (2) transferring real and personal property;

25 (3) establishing interim service rates for affected
26 customers during specified times; and

27 (4) other provisions necessary for the just and

1 reasonable allocation of assets and liabilities.

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

7 (e) The utility commission shall not order compensation to
8 the decertificated retail utility if service to the entire service
9 area is ordered under this section.

10 SECTION 2.56. Sections 13.257(e), (i), (r), and (s), Water
11 Code, are amended to read as follows:

12 (e) The notice must be given to the prospective purchaser
13 before the execution of a binding contract of purchase and sale.
14 The notice may be given separately or as an addendum to or paragraph
15 of the contract. If the seller fails to provide the notice required
16 by this section, the purchaser may terminate the contract. If the
17 seller provides the notice at or before the closing of the purchase
18 and sale contract and the purchaser elects to close even though the
19 notice was not timely provided before the execution of the
20 contract, it is conclusively presumed that the purchaser has waived
21 all rights to terminate the contract and recover damages or pursue
22 other remedies or rights under this section. Notwithstanding any
23 provision of this section to the contrary, a seller, title
24 insurance company, real estate broker, or examining attorney, or an
25 agent, representative, or person acting on behalf of the seller,
26 company, broker, or attorney, is not liable for damages under
27 Subsection (m) or (n) or liable for any other damages to any person

1 for:

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

6 (A) the utility service provider did not file the
7 map of the certificated service area in the real property records of
8 the county in which the service area is located and with the utility
9 commission depicting the boundaries of the service area of the
10 utility service provider as shown in the real property records of
11 the county in which the service area is located; and

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

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

19 (i) If the notice is given at closing as provided by
20 Subsection (g), a purchaser, or the purchaser's heirs, successors,
21 or assigns, may not maintain an action for damages or maintain an
22 action against a seller, title insurance company, real estate
23 broker, or lienholder, or any agent, representative, or person
24 acting on behalf of the seller, company, broker, or lienholder, by
25 reason of the seller's use of the information filed with the utility
26 commission by the utility service provider or the seller's use of
27 the map of the certificated service area of the utility service

1 provider filed in the real property records to determine whether
2 the property to be purchased is within the certificated service
3 area of the utility service provider. An action may not be
4 maintained against a title insurance company for the failure to
5 disclose that the described real property is included within the
6 certificated service area of a utility service provider if the
7 utility service provider did not file in the real property records
8 or with the utility commission the map of the certificated service
9 area.

10 (r) A utility service provider shall:

11 (1) record in the real property records of each county
12 in which the service area or a portion of the service area is
13 located a certified copy of the map of the certificate of public
14 convenience and necessity and of any amendment to the certificate
15 as contained in the utility commission's records, and a boundary
16 description of the service area by:

17 (A) a metes and bounds survey certified by a
18 licensed state land surveyor or a registered professional land
19 surveyor;

20 (B) the Texas State Plane Coordinate System;

21 (C) verifiable landmarks, including a road,
22 creek, or railroad line; or

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

25 (2) submit to the executive director of the utility
26 commission evidence of the recording.

27 (s) Each county shall accept and file in its real property

1 records a utility service provider's map presented to the county
2 clerk under this section if the map meets filing requirements, does
3 not exceed 11 inches by 17 inches in size, and is accompanied by the
4 appropriate fee. The recording required by this section must be
5 completed not later than the 31st day after the date a utility
6 service provider receives a final order from the utility commission
7 granting an application for a new certificate or for an amendment to
8 a certificate that results in a change in the utility service
9 provider's service area.

10 SECTION 2.57. Sections 13.301(a), (b), (c), (d), (e), (f),
11 and (g), Water Code, are amended to read as follows:

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

19 (1) file a written application with the utility
20 commission; and

21 (2) unless public notice is waived by the executive
22 director of the utility commission for good cause shown, give
23 public notice of the action.

24 (b) The utility commission may require that the person
25 purchasing or acquiring the water or sewer system demonstrate
26 adequate financial, managerial, and technical capability for
27 providing continuous and adequate service to the requested area and

1 any areas currently certificated to the person.

2 (c) If the person purchasing or acquiring the water or sewer
3 system cannot demonstrate adequate financial capability, the
4 utility commission may require that the person provide a bond or
5 other financial assurance in a form and amount specified by the
6 utility commission to ensure continuous and adequate utility
7 service is provided.

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

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

19 (1) the application filed with the utility commission
20 or the public notice was improper;

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

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

1 (A) noncompliance with the requirements of the
2 utility commission, the commission, or the [~~Texas~~] Department of
3 State Health Services; or

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

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

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

15 (f) Unless the executive director of the utility commission
16 requests that a public hearing be held, the sale, acquisition,
17 lease, or rental may be completed as proposed:

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

19 (2) at any time after the executive director of the
20 utility commission notifies the utility or water supply or sewer
21 service corporation that a hearing will not be requested.

22 (g) If a hearing is requested or if the utility or water
23 supply or sewer service corporation fails to make the application
24 as required or to provide public notice, the sale, acquisition,
25 lease, or rental may not be completed unless the utility commission
26 determines that the proposed transaction serves the public
27 interest.

1 SECTION 2.58. Section 13.302, Water Code, is amended to
2 read as follows:

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

10 (b) The utility commission may require that a person
11 acquiring a controlling interest in a utility demonstrate adequate
12 financial, managerial, and technical capability for providing
13 continuous and adequate service to the requested area and any areas
14 currently certificated to the person.

15 (c) If the person acquiring a controlling interest cannot
16 demonstrate adequate financial capability, the utility commission
17 may require that the person provide a bond or other financial
18 assurance in a form and amount specified by the utility commission
19 to ensure continuous and adequate utility service is provided.

20 (d) The executive director of the utility commission may
21 request that the utility commission hold a public hearing on the
22 transaction if the executive director of the utility commission
23 believes that a criterion prescribed by Section 13.301(e) applies.

24 (e) Unless the executive director of the utility commission
25 requests that a public hearing be held, the purchase or acquisition
26 may be completed as proposed:

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

1 (2) at any time after the executive director of the
2 utility commission notifies the person or utility that a hearing
3 will not be requested.

4 (f) If a hearing is requested or if the person or utility
5 fails to make the application to the utility commission as
6 required, the purchase or acquisition may not be completed unless
7 the utility commission determines that the proposed transaction
8 serves the public interest. A purchase or acquisition that is not
9 completed in accordance with the provisions of this section is
10 void.

11 SECTION 2.59. Section 13.303, Water Code, is amended to
12 read as follows:

13 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may
14 not loan money, stocks, bonds, notes, or other evidences of
15 indebtedness to any corporation or person owning or holding
16 directly or indirectly any stock of the utility unless the utility
17 reports the transaction to the utility commission within 60 days
18 after the date of the transaction.

19 SECTION 2.60. Section 13.304, Water Code, is amended to
20 read as follows:

21 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that
22 receives notice that all or a portion of the utility's facilities or
23 property used to provide utility service are being posted for
24 foreclosure shall notify the utility commission and the commission
25 in writing of that fact not later than the 10th day after the date on
26 which the utility receives the notice.

27 (b) A financial institution that forecloses on a utility or

1 on any part of the utility's facilities or property that are used to
2 provide utility service is not required to provide the 120-day
3 notice prescribed by Section 13.301, but shall provide written
4 notice to the utility commission and the commission before the 30th
5 day preceding the date on which the foreclosure is completed.

6 (c) The financial institution may operate the utility for an
7 interim period prescribed by utility commission rule before
8 transferring or otherwise obtaining a certificate of convenience
9 and necessity. A financial institution that operates a utility
10 during an interim period under this subsection is subject to each
11 utility commission rule to which the utility was subject and in the
12 same manner.

13 SECTION 2.61. Section 13.341, Water Code, is amended to
14 read as follows:

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

23 SECTION 2.62. Section 13.342, Water Code, is amended to
24 read as follows:

25 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING
26 SECURITIES. The utility commission may require the disclosure of
27 the identity and respective interests of every owner of any

1 substantial interest in the voting securities of any utility or its
2 affiliated interest. One percent or more is a substantial interest
3 within the meaning of this section.

4 SECTION 2.63. Section 13.343(a), Water Code, is amended to
5 read as follows:

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

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

12 (2) the executive director of the utility commission
13 determines that the utility cannot obtain wholesale water service
14 from another source at a lower cost than from the affiliate.

15 SECTION 2.64. Section 13.381, Water Code, is amended to
16 read as follows:

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

20 SECTION 2.65. Section 13.382(a), Water Code, is amended to
21 read as follows:

22 (a) Any party represented by counsel who alleges that
23 existing rates are excessive or that rates prescribed by the
24 utility commission are excessive and who is a prevailing party in
25 proceedings for review of a utility commission order or decision
26 may in the same action recover against the regulation fund
27 reasonable fees for attorneys and expert witnesses and other costs

1 incurred by him before the utility commission and the court. The
2 amount of the attorney's fees shall be fixed by the court.

3 SECTION 2.66. Section 13.411, Water Code, is amended to
4 read as follows:

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

20 (b) If the executive director of the utility commission or
21 the executive director of the commission has reason to believe that
22 the failure of the owner or operator of a water utility to properly
23 operate, maintain, or provide adequate facilities presents an
24 imminent threat to human health or safety, the executive director
25 of the utility commission or the executive director of the
26 commission shall immediately:

27 (1) notify the utility's representative; and

1 (2) initiate enforcement action consistent with:

2 (A) this subchapter; and

3 (B) procedural rules adopted by the utility
4 commission or the commission.

5 SECTION 2.67. Section 13.4115, Water Code, is amended to
6 read as follows:

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

17 SECTION 2.68. Sections 13.412(a), (f), and (g), Water Code,
18 are amended to read as follows:

19 (a) At the request of the utility commission or the
20 commission, the attorney general shall bring suit for the
21 appointment of a receiver to collect the assets and carry on the
22 business of a water or sewer utility that:

23 (1) has abandoned operation of its facilities;

24 (2) informs the utility commission or the commission
25 that the owner is abandoning the system;

26 (3) violates a final order of the utility commission
27 or the commission; or

1 (4) allows any property owned or controlled by it to be
2 used in violation of a final order of the utility commission or the
3 commission.

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

6 (1) failure to pay a bill or obligation owed to a
7 retail public utility or to an electric or gas utility with the
8 result that the utility service provider has issued a notice of
9 discontinuance of necessary services;

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

12 (3) failure to adequately maintain facilities,
13 resulting in potential health hazards, extended outages, or
14 repeated service interruptions;

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

17 (5) failure to secure an alternative available water
18 supply during an outage;

19 (6) displaying a pattern of hostility toward or
20 repeatedly failing to respond to the utility commission or the
21 commission or the utility's customers; and

22 (7) failure to provide the utility commission or the
23 commission with adequate information on how to contact the utility
24 for normal business and emergency purposes.

25 (g) Notwithstanding Section 64.021, Civil Practice and
26 Remedies Code, a receiver appointed under this section may seek
27 [~~commission~~] approval from the utility commission and the

1 commission to acquire the water or sewer utility's facilities and
2 transfer the utility's certificate of convenience and necessity.
3 The receiver must apply in accordance with Subchapter H.

4 SECTION 2.69. Section 13.413, Water Code, is amended to
5 read as follows:

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

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

21 SECTION 2.70. Section 13.4131, Water Code, is amended to
22 read as follows:

23 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The
24 utility commission, after providing to the utility notice and an
25 opportunity for a hearing, may place a utility under supervision
26 for gross or continuing mismanagement, gross or continuing
27 noncompliance with this chapter or a rule adopted under this

1 chapter [~~commission rules~~], or noncompliance with an order issued
2 under this chapter [~~commission orders~~].

3 (b) While supervising a utility, the utility commission may
4 require the utility to abide by conditions and requirements
5 prescribed by the utility commission, including:

6 (1) management requirements;

7 (2) additional reporting requirements;

8 (3) restrictions on hiring, salary or benefit
9 increases, capital investment, borrowing, stock issuance or
10 dividend declarations, and liquidation of assets; and

11 (4) a requirement that the utility place the utility's
12 funds into an account in a financial institution approved by the
13 utility commission and use of those funds shall be restricted to
14 reasonable and necessary utility expenses.

15 (c) While supervising a utility, the utility commission may
16 require that the utility obtain [~~commission~~] approval from the
17 utility commission before taking any action that may be restricted
18 under Subsection (b) [~~of this section~~]. Any action or transaction
19 which occurs without [~~commission~~] approval may be voided by the
20 utility commission.

21 SECTION 2.71. Sections 13.4132(a), (b), and (d), Water
22 Code, are amended to read as follows:

23 (a) The utility commission or the commission, after
24 providing to the utility notice and an opportunity to be heard by
25 the commissioners at a utility commission or commission meeting,
26 may authorize a willing person to temporarily manage and operate a
27 utility if the utility:

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

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

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

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

12 SECTION 2.72. Sections 13.4133(a) and (c), Water Code, are
13 amended to read as follows:

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

21 (c) The utility commission shall schedule a hearing to
22 establish a final rate within 15 months after the date on which an
23 emergency rate increase takes effect. The utility commission shall
24 require the utility to provide notice of the hearing to each
25 customer and to the Office of Public Utility Counsel. The
26 additional revenues collected under an emergency rate increase are
27 subject to refund if the utility commission finds that the rate

1 increase was larger than necessary to ensure continuous and
2 adequate service.

3 SECTION 2.73. Sections 13.414(a) and (c), Water Code, are
4 amended to read as follows:

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

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

15 SECTION 2.74. Sections 13.4151(a), (b), (c), (d), (e), (f),
16 (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as
17 follows:

18 (a) If a person, affiliated interest, or entity subject to
19 the jurisdiction of the utility commission or the commission
20 violates this chapter or a rule or order adopted under this chapter,
21 the utility commission or the commission, as applicable, may assess
22 a penalty against that person, affiliated interest, or entity as
23 provided by this section. The penalty may be in an amount not to
24 exceed \$5,000 a day. Each day a violation continues may be
25 considered a separate violation.

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

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

3 (2) with respect to the alleged violator:

4 (A) the history and extent of previous
5 violations;

6 (B) the degree of culpability, including whether
7 the violation was attributable to mechanical or electrical failures
8 and whether the violation could have been reasonably anticipated
9 and avoided;

10 (C) the demonstrated good faith, including
11 actions taken by the person, affiliated interest, or entity to
12 correct the cause of the violation;

13 (D) any economic benefit gained through the
14 violation; and

15 (E) the amount necessary to deter future
16 violations; and

17 (3) any other matters that justice requires.

18 (c) If, after examination of a possible violation and the
19 facts surrounding that possible violation, the executive director
20 of the utility commission or the executive director of the
21 commission concludes that a violation has occurred, the executive
22 director of the utility commission or the executive director of the
23 commission may issue a preliminary report stating the facts on
24 which that conclusion is based, recommending that a penalty under
25 this section be imposed on the person, affiliated interest, or
26 retail public utility charged, and recommending the amount of that
27 proposed penalty. The executive director of the utility commission

1 or the executive director of the commission shall base the
2 recommended amount of the proposed penalty on the factors provided
3 by Subsection (b) [~~of this section~~], and shall analyze each factor
4 for the benefit of the agency [~~commission~~].

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

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

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

1 utility commission or the commission assesses the penalty
2 recommended by the report, the utility commission or the commission
3 shall give written notice to the person, affiliated interest, or
4 retail public utility charged of its decision.

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

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

1 the Texas Register not later than the 10th day after the date on
2 which the decision is adopted.

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

7 (1) pay the penalty in full; or

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

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

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

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

25 (k) Judicial review of the order or decision of the agency
26 [~~commission~~] assessing the penalty shall be under the substantial
27 evidence rule and may be instituted by filing a petition with a

1 district court in Travis County, as provided by Subchapter G,
2 Chapter 2001, Government Code.

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

7 SECTION 2.75. Section 13.417, Water Code, is amended to
8 read as follows:

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

16 SECTION 2.76. Section 13.418, Water Code, is amended to
17 read as follows:

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

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

1 SECTION 2.77. Section 13.501(7), Water Code, is amended to
2 read as follows:

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

7 SECTION 2.78. Section 13.502(e), Water Code, is amended to
8 read as follows:

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

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

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

18 SECTION 2.79. Sections 13.503(a), (b), and (e), Water Code,
19 are amended to read as follows:

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

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

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

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

1 SECTION 2.80. Section 13.5031, Water Code, is amended to
2 read as follows:

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

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

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

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

24 (4) the owner or condominium manager shall maintain
25 adequate records regarding the utility consumption of the
26 manufactured home rental community, apartment house, or multiple
27 use facility, the charges assessed by the retail public utility,

1 and the allocation of the utility costs to the tenants;

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

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

11 SECTION 2.81. Section 13.505, Water Code, is amended to
12 read as follows:

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

1 SECTION 2.82. Section 13.512, Water Code, is amended to
2 read as follows:

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

13 SECTION 2.83. Section 13.513, Water Code, is amended to
14 read as follows:

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

1 purposes of this chapter [~~Chapter 13~~] with respect to such other
2 person or municipality.

3 SECTION 2.84. Section 49.352(c), Water Code, is amended to
4 read as follows:

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

11 SECTION 2.85. Section 552.047(e), Local Government Code, is
12 amended to read as follows:

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

18 SECTION 2.86. Section 7201.004(b), Special District Local
19 Laws Code, is amended to read as follows:

20 (b) This section does not apply to:

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

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

27 SECTION 2.87. Section 7201.005(c), Special District Local

1 Laws Code, is amended to read as follows:

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

8 SECTION 2.88. Section 7201.102, Special District Local Laws
9 Code, is amended to read as follows:

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

17 SECTION 2.89. Section 8363.106(b), Special District Local
18 Laws Code, is amended to read as follows:

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

1 certification on the city's behalf in the manner provided by
2 Section 13.255(b), Water Code.

3 SECTION 2.90. Section 8363.251(a), Special District Local
4 Laws Code, is amended to read as follows:

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

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

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

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

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

27 SECTION 2.91. Section 8801.201, Special District Local Laws

1 Code, is amended to read as follows:

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

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

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

16 SECTION 2.92. (a) On September 1, 2014, the following are
17 transferred from the Texas Commission on Environmental Quality to
18 the Public Utility Commission of Texas:

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

26 (2) any obligations and contracts of the Texas
27 Commission on Environmental Quality that are directly related to

1 implementing a power, duty, function, program, or activity
2 transferred under this article; and

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

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

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

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

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

26 (c) The memorandum of understanding under this section is
27 not required to be adopted by rule under Section 5.104, Water Code.

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

10 (e) The Texas Commission on Environmental Quality and the
11 Public Utility Commission of Texas shall appoint a transition team
12 to accomplish the purposes of this section. The transition team
13 shall establish guidelines on how the two agencies will cooperate
14 regarding:

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

23 (f) A rule, form, policy, procedure, or decision of the
24 Texas Commission on Environmental Quality related to a power, duty,
25 function, program, or activity transferred under this article
26 continues in effect as a rule, form, policy, procedure, or decision
27 of the Public Utility Commission of Texas and remains in effect

1 until amended or replaced by that agency.

2 (g) The memorandum required by this section must be
3 completed by August 1, 2014.

4 (h) The Public Utility Commission of Texas and the Texas
5 Commission on Environmental Quality shall adopt rules to implement
6 the changes in law made by this Act to Chapter 13, Water Code, not
7 later than February 1, 2015.

8 SECTION 2.93. (a) The Public Utility Commission of Texas
9 shall conduct a comparative analysis of the ratemaking authority of
10 the commission before the effective date of this Act and the
11 ratemaking authority of the commission after the transition
12 described in Section 2.92 of this article, to identify potential
13 for procedural standardization. The Public Utility Commission of
14 Texas shall issue a report of the analysis, with recommendations
15 regarding rate standardization, for consideration by the 84th
16 Legislature.

17 (b) The Public Utility Commission of Texas shall prepare a
18 report describing staffing changes related to the transition
19 described in Section 2.92 of this article, including reductions in
20 staff that the commission may realize as a result of consolidated
21 functions. The Public Utility Commission of Texas shall submit the
22 report to the Legislative Budget Board and the governor with the
23 legislative appropriations request for the 2016-2017 biennium.

24 SECTION 2.94. (a) On September 1, 2014, the following are
25 transferred from the office of public interest counsel of the Texas
26 Commission on Environmental Quality to the Office of Public Utility
27 Counsel:

1 (1) the powers, duties, functions, programs, and
2 activities of the office of public interest counsel of the Texas
3 Commission on Environmental Quality relating to the representation
4 of the public interest in matters related to the economic
5 regulation of water and sewer service under Chapters 11, 12, and 13,
6 Water Code, as amended by this article;

7 (2) any obligations and contracts of the office of
8 public interest counsel of the Texas Commission on Environmental
9 Quality that are directly related to implementing a power, duty,
10 function, program, or activity transferred under this article; and

11 (3) all property and records in the custody of the
12 office of public interest counsel of the Texas Commission on
13 Environmental Quality that are related to a power, duty, function,
14 program, or activity transferred under this article and all funds
15 appropriated by the legislature for that power, duty, function,
16 program, or activity.

17 (b) The office of public interest counsel of the Texas
18 Commission on Environmental Quality and the Office of Public
19 Utility Counsel shall enter into a memorandum of understanding
20 that:

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

23 (2) establishes a plan for the identification and
24 transfer of the records, personnel, property, and unspent
25 appropriations of the Texas Commission on Environmental Quality
26 that are used for purposes of the office of public interest
27 counsel's powers and duties directly related to the representation

1 of the public interest in matters relating to the economic
2 regulation of water and sewer service under Chapters 11, 12, and 13,
3 Water Code, as amended by this article.

4 (c) The memorandum of understanding under this section is
5 not required to be adopted by rule under Section 5.104, Water Code.

6 (d) The office of public interest counsel of the Texas
7 Commission on Environmental Quality and the Office of Public
8 Utility Counsel may agree in the memorandum of understanding under
9 this section to transfer to the Office of Public Utility Counsel any
10 personnel of the office of public interest counsel whose functions
11 predominantly involve powers, duties, obligations, functions, and
12 activities related to the representation of the public interest in
13 matters relating to the economic regulation of water and sewer
14 service under Chapters 11, 12, and 13, Water Code, as amended by
15 this article.

16 (e) The office of public interest counsel of the Texas
17 Commission on Environmental Quality and the Office of Public
18 Utility Counsel shall appoint a transition team to accomplish the
19 purposes of this section.

20 (f) A rule, form, policy, procedure, or decision of the
21 office of public interest counsel of the Texas Commission on
22 Environmental Quality related to a power, duty, function, program,
23 or activity transferred under this article continues in effect as a
24 rule, form, policy, procedure, or decision of the Office of Public
25 Utility Counsel and remains in effect until amended or replaced by
26 that agency.

27 (g) The memorandum required by this section must be

1 completed by August 1, 2014.

2 (h) The Office of Public Utility Counsel and the office of
3 public interest counsel of the Texas Commission on Environmental
4 Quality shall adopt rules to implement the changes in law made by
5 this article to Chapter 13, Water Code, not later than February 1,
6 2015.

7 SECTION 2.95. The Office of Public Utility Counsel shall
8 prepare a report describing staffing changes related to the
9 transition described in Section 2.94 of this article, including
10 reductions in staff that the office may realize as a result of
11 consolidated functions. The Office of Public Utility Counsel shall
12 submit the report to the Legislative Budget Board and the governor
13 with the legislative appropriations request for the 2016-2017
14 biennium.

15 ARTICLE 3. EFFECTIVE DATE

16 SECTION 3.01. This Act takes effect September 1, 2013.