

By: Nichols, Hegar

S.B. No. 661

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuation and functions, as applicable, of the
3 Electric Reliability Council of Texas, the Office of Public Utility
4 Counsel, and the Public Utility Commission of Texas and to the
5 transfer of certain functions from the Texas Commission on
6 Environmental Quality to the Public Utility Commission of Texas;
7 imposing administrative penalties.

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

9 ARTICLE 1. GENERAL PROVISIONS RELATING TO THE PUBLIC UTILITY
10 COMMISSION OF TEXAS, THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, AND
11 THE OFFICE OF PUBLIC UTILITY COUNSEL

12 SECTION 1.01. Section 12.005, Utilities Code, is amended to
13 read as follows:

14 Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility
15 Commission of Texas is subject to Chapter 325, Government Code
16 (Texas Sunset Act). Unless continued in existence as provided by
17 that chapter or by Chapter 39, the commission is abolished and this
18 title expires September 1, 2023 [~~2011~~].

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

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

1 SECTION 1.03. Section 13.002, Utilities Code, is amended to
2 read as follows:

3 Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of
4 Public Utility Counsel is subject to Chapter 325, Government Code
5 (Texas Sunset Act). Unless continued in existence as provided by
6 that chapter, the office is abolished and this chapter expires
7 September 1, 2023 [~~2011~~].

8 SECTION 1.04. Section 15.023, Utilities Code, is amended by
9 amending Subsections (b), (c), and (d) and adding Subsections (b-1)
10 and (b-2) to read as follows:

11 (b) Except as provided by Subsection (b-1), the [The]
12 penalty for a violation may be in an amount not to exceed \$25,000.
13 Each day a violation continues or occurs is a separate violation for
14 purposes of imposing a penalty.

15 (b-1) The penalty for a violation of a reliability standard
16 adopted by the independent organization certified under Section
17 39.151 or of a commission rule relating to reliability in the
18 wholesale electric market may be in an amount not to exceed
19 \$100,000. Each day a violation continues or occurs is a separate
20 violation for purposes of imposing a penalty.

21 (b-2) If a person pays a penalty to a federal authority for a
22 violation of a reliability standard that is the same or
23 substantially the same as a reliability standard adopted by the
24 independent organization certified under Section 39.151:

25 (1) the commission may not assess an administrative
26 penalty for the same instance or circumstance for which the person
27 paid the federal penalty; and

1 (2) the commission shall refund the full amount of an
2 administrative penalty that the commission assessed against the
3 person before the date the person paid the federal penalty, if the
4 commission assessed the penalty for the same instance or
5 circumstance for which the person paid the federal penalty.

6 (c) The commission by rule shall establish a classification
7 system for violations described by Subsection (b) and a separate
8 classification system for violations described by Subsection
9 (b-1). Each system must include ~~[that includes]~~ a range of
10 administrative penalties that may be assessed for each class of
11 violation, based on:

12 (1) the seriousness of the violation, including:

13 (A) the nature, circumstances, extent, and
14 gravity of a prohibited act; and

15 (B) the hazard or potential hazard created to the
16 health, safety, or economic welfare of the public;

17 (2) the economic harm to property or the environment
18 caused by the violation;

19 (3) the history of previous violations;

20 (4) the amount necessary to deter future violations;

21 (5) efforts to correct the violation; and

22 (6) any other matter that justice may require.

23 (d) The classification system established under Subsection
24 (c) shall provide that a penalty in an amount that exceeds \$5,000
25 may be assessed only if the violation is included in the highest
26 class of violations in the classification system. This subsection
27 does not apply to the classification system established under

1 Subsection (c) for a violation described by Subsection (b-1).

2 SECTION 1.05. Chapter 15, Utilities Code, is amended by
3 adding Subchapter D to read as follows:

4 SUBCHAPTER D. CEASE AND DESIST ORDERS

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

7 Sec. 15.102. RULES. The commission shall adopt rules to
8 implement this subchapter.

9 Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission
10 may proceed solely under this subchapter or under this subchapter
11 in conjunction with other applicable law.

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

14 (1) after providing notice and an opportunity for a
15 hearing if practicable or without notice or opportunity for a
16 hearing; and

17 (2) if the commission determines that the conduct of a
18 person:

19 (A) poses a threat to continuous and adequate
20 electric service;

21 (B) is fraudulent;

22 (C) is hazardous;

23 (D) creates an immediate danger to the public
24 safety; or

25 (E) is causing or can be reasonably expected to
26 cause an immediate injury to a customer of electric services and
27 that the injury is incapable of being repaired or rectified by

1 monetary compensation.

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

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

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

12 (1) contains a statement of the charges; and
13 (2) requires the person immediately to cease and
14 desist from the acts, methods, or practices stated in the order.

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

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

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

1 that is:

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

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

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

11 (d) The commission may hold a hearing under this subchapter
12 or may authorize the State Office of Administrative Hearings to
13 hold the hearing.

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

17 Sec. 15.108. ADMINISTRATIVE PENALTY. The commission may
18 impose an administrative penalty under Subchapter B against a
19 person who violates an order issued under this subchapter.

20 SECTION 1.06. Section 39.151, Utilities Code, is amended by
21 amending Subsections (d-1), (e), (g), and (g-1) and adding
22 Subsections (d-2), (d-3), (d-4), (e-1), (g-2), (g-3), (n), (o),
23 (p), and (q) to read as follows:

24 (d-1) The commission shall require an independent
25 organization certified by the commission under this section to
26 annually submit to the commission for review and approval the
27 organization's entire proposed annual budget. The commission may

1 approve, disapprove, or modify any item included in the proposed
2 budget. The commission by rule shall establish the type of
3 information or documents needed to effectively evaluate the
4 proposed budget and reasonable dates for the submission of that
5 information or those documents. The commission shall establish a
6 procedure to provide public notice of and public participation in
7 the budget review process.

8 (d-2) An independent organization certified by the
9 commission under this section must submit to the commission for
10 review and approval proposals for obtaining debt financing or for
11 refinancing existing debt. The commission may approve, disapprove,
12 or modify a proposal.

13 (d-3) An independent organization certified by the
14 commission under this section shall develop proposed performance
15 measures to track the organization's operations. The independent
16 organization must submit the proposed performance measures to the
17 commission for review and approval. The commission shall annually
18 review the organization's performance as part of the budget review
19 process under Subsection (d-1). The commission shall prepare an
20 annual report detailing the organization's performance and submit
21 the report to the lieutenant governor, the speaker of the house of
22 representatives, and each house and senate standing committee that
23 has jurisdiction over electric utility issues.

24 (d-4) The commission may:

25 (1) require an independent organization to provide
26 reports and information relating to the independent organization's
27 performance of the functions prescribed by this section and

1 relating to the organization's revenues, expenses, and other
2 financial matters;

3 (2) prescribe a system of accounts for an independent
4 organization;

5 (3) conduct audits of an independent organization's
6 performance of the functions prescribed by this section or relating
7 to its revenues, expenses, and other financial matters and may
8 require an independent organization to conduct such an audit;

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

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

18 (6) resolve disputes between an affected person and an
19 independent organization and adopt procedures for the efficient
20 resolution of such disputes.

21 (e) After approving the budget of an independent
22 organization under Subsection (d-1), the [The] commission shall
23 [may] authorize the [an independent] organization [that is
24 certified under this section] to charge [a reasonable and
25 competitively neutral rate] to wholesale buyers and sellers a
26 system administration fee, within a range determined by the
27 commission, that is reasonable and competitively neutral to fund

1 ~~[to cover]~~ the independent organization's approved budget ~~[costs]~~.
2 The commission shall investigate the organization's cost
3 efficiencies, salaries and benefits, and use of debt financing and
4 may require the organization to provide any information needed to
5 effectively evaluate ~~[the organization's budget and]~~ the
6 reasonableness and neutrality of the fee ~~[a rate or proposed rate]~~
7 or to evaluate the effectiveness or efficiency of the organization.
8 The commission shall work with the organization to establish the
9 detail of information, both current and historical, and the time
10 frames the commission needs to effectively evaluate the fee. The
11 commission shall require the independent organization to closely
12 match actual revenues generated by the fee with revenue necessary
13 to fund the budget and make quarterly fee adjustments to ensure that
14 the budget year does not end with surplus or insufficient funds.
15 The commission shall require the organization to submit to the
16 commission quarterly reports that compare actual expenditures with
17 budgeted expenditures ~~[a rate or a rate request]~~.

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

22 (g) To maintain certification as an independent
23 organization under this section, an organization's governing body
24 must be composed of persons specified by this section and selected
25 in accordance with formal bylaws or protocols of the organization.
26 The bylaws or protocols must be approved by the commission and must
27 reflect the input of the commission. The bylaws must specify the

1 process by which appropriate stakeholders elect members and, for
2 unaffiliated members, prescribe professional qualifications for
3 selection as a member. The bylaws must require the use of a
4 professional search firm to identify candidates for membership of
5 unaffiliated members. The process must allow for commission input
6 in identifying candidates and commission consultation regarding
7 the selection of the chief executive officer or an unaffiliated
8 board member, subject to Subsection (p). The governing body must be
9 composed of:

10 (1) one member unaffiliated with any market segment
11 and selected by [the chairman of] the commission, who may be a
12 former commissioner, to serve a three-year term [as an ex officio
13 ~~nonvoting member]~~;

14 (2) one member [the counsellor as an ex officio voting
15 ~~member]~~ representing residential and small commercial consumer
16 interests and selected by the counsellor to serve a one-year term;

17 (3) the chief executive officer of the independent
18 organization as an ex officio voting member;

19 (4) six market participants elected by their
20 respective market segments to serve one-year terms, with:

- 21 (A) one representing independent generators;
- 22 (B) one representing investor-owned utilities;
- 23 (C) one representing power marketers;
- 24 (D) one representing retail electric providers;
- 25 (E) one representing municipally owned
26 utilities; and
- 27 (F) one representing electric cooperatives;

1 (5) one member representing industrial consumer
2 interests and elected by the industrial consumer market segment to
3 serve a one-year term;

4 (6) one member representing large commercial consumer
5 interests selected in accordance with the bylaws to serve a
6 one-year term; ~~and~~

7 (7) five members unaffiliated with any market segment
8 and selected by the other members of the governing body to serve
9 three-year terms; and

10 (8) one member unaffiliated with any market segment
11 who possesses financial expertise and is selected by the other
12 members of the governing body to serve a three-year term.

13 (g-1) The presiding officer of the governing body must be
14 one of the members described by Subsection (g)(7) or (8).

15 (g-2) To maintain certification as an independent
16 organization under this section, the organization's governing body
17 must establish and implement a formal process for adopting new
18 protocols or revisions to existing protocols. The process must
19 require that:

20 (1) a majority of the organization's governing body
21 initiate the creation or revision of protocols; and

22 (2) the organization's staff develop the new or
23 revised protocols and submit the protocols to the governing body
24 for adoption.

25 (g-3) The governing body of an independent organization
26 certified by the commission under this section shall, in accordance
27 with formal bylaws or protocols adopted by the organization and

1 approved by the commission, establish and maintain an advisory
2 committee whose membership is broadly representative of the
3 organization's members to assist the organization's governing body
4 and staff in developing or revising protocols or in performing the
5 organization's other duties and functions. This subsection does
6 not prohibit the governing body of the organization from appointing
7 one or more additional committees or subcommittees to assist the
8 organization's governing body and staff in performing the
9 organization's duties and functions.

10 (n) An independent organization certified by the commission
11 under this section is subject to review under Chapter 325,
12 Government Code (Texas Sunset Act), but is not abolished under that
13 chapter. The independent organization shall be reviewed during the
14 periods in which the Public Utility Commission of Texas is
15 reviewed.

16 (o) For any reason, the commission may remove a board member
17 selected by the commission under Subsection (g)(1) and the
18 counsellor may remove a board member selected by the counsellor
19 under Subsection (g)(2). The organization's governing body may not
20 remove a member selected by the commission or the counsellor.

21 (p) Only the governing body of an independent organization
22 may select or remove the organization's chief executive officer or
23 an unaffiliated board member not selected by the commission or the
24 counsellor. The selection or removal of the chief executive
25 officer is not subject to review or approval by the commission. The
26 commission may not initiate the removal or reappointment of an
27 unaffiliated board member not selected by the commission. The

1 commission may, however, recommend that an unaffiliated board
2 member not be reappointed or be removed for cause by the governing
3 board under Subsection (g).

4 (g) The governing board may remove a board member not
5 appointed by the commission or the counsellor for cause, including
6 failure to properly perform the member's duties to the independent
7 organization, a violation of a policy or procedure adopted by the
8 governing body, a violation of a law of this state or the United
9 States, or a violation of a commission rule adopted under this
10 section. Notwithstanding any other provision of this section, the
11 commission does not have jurisdiction over and may not review a
12 matter relating to the selection, qualifications, or removal of a
13 member not appointed by the commission or the counsellor.

14 SECTION 1.07. Subsection (c), Section 39.1515, Utilities
15 Code, is amended to read as follows:

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

19 SECTION 1.08. Subchapter C, Chapter 52, Utilities Code, is
20 amended by adding Section 52.1035 to read as follows:

21 Sec. 52.1035. RENEWAL OF CERTAIN REGISTRATIONS OR
22 CERTIFICATES. (a) The commission by rule shall require each
23 interexchange telecommunications utility, holder of a certificate
24 of operating authority, and holder of a service provider
25 certificate of operating authority to file with the commission on a
26 one-time or regular basis:

27 (1) the utility's or holder's name;

1 (2) the utility's or holder's address; and

2 (3) the most recent version of each annual report the
3 commission requires the utility or holder to file under this
4 subtitle.

5 (b) The rules must:

6 (1) require the commission to automatically allow a
7 utility or holder an extension of a filing deadline for the number
8 of days prescribed by the rule, as applicable; and

9 (2) state that the registration or certificate of a
10 utility or holder will not be valid after the last day of the
11 automatic extension period described by Subdivision (1) if the
12 utility or holder does not file information required by the
13 commission under this section by the end of the automatic extension
14 period.

15 (c) A utility or holder whose registration or certificate is
16 no longer valid may reregister or obtain a new certificate only by
17 complying with the requirements prescribed for an original
18 registration or for obtaining an original certificate.

19 SECTION 1.09. The Public Utility Commission of Texas shall
20 adopt rules to implement the filing process required by Section
21 52.1035, Utilities Code, as added by this article, as soon as
22 practicable. The rules must specify whether the commission will
23 require that an interexchange telecommunications utility, holder
24 of a certificate of operating authority, or holder of a service
25 provider certificate of operating authority file the information
26 required by Section 52.1035, Utilities Code, as added by this
27 article, once or on a regular basis. Regardless of the frequency of

1 filing required, each utility or holder shall file the information
2 required by Section 52.1035, Utilities Code, as added by this
3 article, not later than January 1, 2012. If the commission requires
4 regular filings, the rules must specify the timing of the
5 subsequent filings.

6 SECTION 1.10. The change in law made by this article to
7 Section 15.023, Utilities Code, applies only to a violation that
8 occurs on or after the effective date of this Act. For purposes of
9 this section, a violation occurs before the effective date of this
10 Act if any element of the violation occurs before that date. A
11 violation that occurs before the effective date of this Act is
12 covered by the law in effect on the date the violation occurred, and
13 the former law is continued in effect for that purpose.

14 ARTICLE 2. WATER AND SEWER UTILITIES

15 SECTION 2.01. Section 13.002, Water Code, is amended by
16 amending Subdivisions (2) and (18) and adding Subdivision (22-a) to
17 read as follows:

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

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

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

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

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

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

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

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

27 (18) "Regulatory authority" means, in accordance with

1 the context in which it is found, either the commission, the utility
2 commission, or the governing body of a municipality.

3 (22-a) "Utility commission" means the Public Utility
4 Commission of Texas.

5 SECTION 2.02. Section 13.004, Water Code, is amended to
6 read as follows:

7 Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER
8 CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS.

9 (a) Notwithstanding any other law, the utility commission has the
10 same jurisdiction over a water supply or sewer service corporation
11 that the utility commission has under this chapter over a water and
12 sewer utility if the utility commission finds that the water supply
13 or sewer service corporation:

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

16 (2) is operating in a manner that does not comply with
17 the requirements for classifications as a nonprofit water supply or
18 sewer service corporation prescribed by Sections 13.002(11) and
19 (24).

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

24 SECTION 2.03. Section 13.011, Water Code, is amended to
25 read as follows:

26 Sec. 13.011. EMPLOYEES. (a) The executive director of the
27 utility commission and the executive director of the commission,

1 subject to approval, as applicable, by the utility commission or
2 the commission, shall employ any engineering, accounting, and
3 administrative personnel necessary to carry out each agency's
4 powers and duties under this chapter.

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

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

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

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

22 (4) preparation of recommendations that the agency
23 [~~commission~~] undertake an investigation of any matter within its
24 jurisdiction;

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

27 (6) protection and representation of the public

1 interest [~~7, together with the public interest advocate,~~] before the
2 agency [~~commission~~]; and

3 (7) other activities that are reasonably necessary to
4 enable the executive director and the staff to perform their
5 duties.

6 SECTION 2.04. Section 13.014, Water Code, is amended to
7 read as follows:

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

12 SECTION 2.05. Subchapter B, Chapter 13, Water Code, is
13 amended by adding Section 13.017 to read as follows:

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

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

19 (1) shall assess the effect of utility rate changes
20 and other regulatory actions on residential consumers in this
21 state;

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

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

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

1 proceeding before the utility commission, including an alternative
2 dispute resolution proceeding; and

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

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

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

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

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

19 (6) is entitled to discovery of any nonprivileged
20 matter that is relevant to the subject matter of a proceeding or
21 petition before the utility commission;

22 (7) may represent an individual residential or small
23 commercial consumer with respect to the consumer's disputed
24 complaint concerning retail utility services that is unresolved
25 before the utility commission; and

26 (8) may recommend legislation to the legislature that
27 the office determines would positively affect the interests of

1 residential and small commercial consumers.

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

4 (d) The appearance of the counsellor in a proceeding does
5 not preclude the appearance of other parties on behalf of
6 residential or small commercial consumers. The counsellor may not
7 be grouped with any other party.

8 SECTION 2.06. Section 13.041, Water Code, is amended to
9 read as follows:

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

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

1 (c) The commission and the utility commission may call and
2 hold hearings, administer oaths, receive evidence at hearings,
3 issue subpoenas to compel the attendance of witnesses and the
4 production of papers and documents, and make findings of fact and
5 decisions with respect to administering this chapter or the rules,
6 orders, or other actions of the commission or the utility
7 commission.

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

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

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

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

26 (f) If an order is issued under Subsection (d) without a
27 hearing, the order shall fix a time, as soon after the emergency

1 order is issued as is practicable, and place for a hearing to be
2 held before the utility commission.

3 (g) The regulatory assessment required by Section 5.701(n)
4 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the
5 utility commission under Section 13.043 [~~of this code~~]. The
6 commission has the authority to enforce payment and collection of
7 the regulatory assessment.

8 SECTION 2.07. Section 13.042, Water Code, is amended to
9 read as follows:

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

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

23 (c) The governing body of a municipality that surrenders its
24 jurisdiction to the utility commission may reinstate its
25 jurisdiction by ordinance at any time after the second anniversary
26 of the date on which the municipality surrendered its jurisdiction
27 to the utility commission, except that the municipality may not

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

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

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

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

21 SECTION 2.08. Subsections (a), (b), (c), (e), (f), (g),
22 (h), and (j), Section 13.043, Water Code, are amended to read as
23 follows:

24 (a) Any party to a rate proceeding before the governing body
25 of a municipality may appeal the decision of the governing body to
26 the utility commission. This subsection does not apply to a
27 municipally owned utility. An appeal under this subsection must be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 2.09. Subsection (b), Section 13.044, Water Code,

1 is amended to read as follows:

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

10 SECTION 2.10. Section 13.046, Water Code, is amended to
11 read as follows:

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

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

1 utility commission and commission rules.

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

11 SECTION 2.11. Section 13.081, Water Code, is amended to
12 read as follows:

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

23 SECTION 2.12. Section 13.082, Water Code, is amended to
24 read as follows:

25 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT
26 AREAS. (a) Notwithstanding any other provision of this section,
27 municipalities shall continue to regulate each kind of local

1 utility service inside their boundaries until the utility
2 commission has assumed jurisdiction over the respective utility
3 pursuant to this chapter.

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

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

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

27 (e) This section does not limit the duty and power of the

1 utility commission to regulate service and rates of municipally
2 regulated water and sewer utilities for service provided to other
3 areas in Texas.

4 SECTION 2.13. Section 13.085, Water Code, is amended to
5 read as follows:

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

15 SECTION 2.14. Subsection (c), Section 13.087, Water Code,
16 is amended to read as follows:

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

19 SECTION 2.15. Subsections (a), (b), (c), and (e), Section
20 13.131, Water Code, are amended to read as follows:

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

1 money, and any other forms, records, and memoranda that in the
2 judgment of the utility commission may be necessary to carry out
3 this chapter.

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

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

1 proceedings.

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

8 SECTION 2.16. Section 13.132, Water Code, is amended to
9 read as follows:

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

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

16 (2) establish forms for all reports;

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

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

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

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

27 (7) require that a copy of annual reports showing all

1 payments of compensation, other than salary or wages subject to the
2 withholding of federal income tax, made to residents of Texas, or
3 with respect to legal, administrative, or legislative matters in
4 Texas, or for representation before the Texas Legislature or any
5 governmental agency or body be filed with it.

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

10 SECTION 2.17. Subsection (b), Section 13.133, Water Code,
11 is amended to read as follows:

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

19 SECTION 2.18. Subsections (b) and (c), Section 13.136,
20 Water Code, are amended to read as follows:

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

23 (c) Every water supply or sewer service corporation shall
24 file with the utility commission tariffs showing all rates that are
25 subject to the appellate jurisdiction of the utility commission and
26 that are in force at the time for any utility service, product, or
27 commodity offered. Every water supply or sewer service corporation

1 shall file with and as a part of those tariffs all rules and
2 regulations relating to or affecting the rates, utility service,
3 product, or commodity furnished. The filing required under this
4 subsection shall be for informational purposes only.

5 SECTION 2.19. Section 13.137, Water Code, is amended to
6 read as follows:

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

9 (1) make available and notify its customers of a
10 business location where its customers may make payments to prevent
11 disconnection of or to restore service:

12 (A) in each county in which the utility provides
13 service; or

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

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

22 (b) The utility commission by rule may provide for waiving
23 the requirements of Subsection (a)(1) for a utility for which
24 meeting those requirements would cause a rate increase or otherwise
25 harm or inconvenience customers. The rules must provide for an
26 additional 14 days to be given for a customer to pay before a
27 utility that is granted a waiver may disconnect service for late

1 payment.

2 (c) Books, accounts, records, or memoranda required by the
3 regulatory authority to be kept in the state may not be removed from
4 the state, except on conditions prescribed by the utility
5 commission.

6 SECTION 2.20. Subsection (b), Section 13.139, Water Code,
7 is amended to read as follows:

8 (b) The governing body of a municipality, as the regulatory
9 authority for public utilities operating within its corporate
10 limits, and the utility commission or the commission as the
11 regulatory authority for public utilities operating outside the
12 corporate limits of any municipality, after reasonable notice and
13 hearing on its own motion, may:

14 (1) ascertain and fix just and reasonable standards,
15 classifications, regulations, service rules, minimum service
16 standards or practices to be observed and followed with respect to
17 the service to be furnished;

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

21 (3) prescribe reasonable regulations for the
22 examination and testing of the service and for the measurement of
23 service; and

24 (4) establish or approve reasonable rules,
25 regulations, specifications, and standards to secure the accuracy
26 of all meters, instruments, and equipment used for the measurement
27 of any utility service.

1 SECTION 2.21. Section 13.1395, Water Code, is amended by
2 adding Subsection (m) to read as follows:

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

5 SECTION 2.22. Subsection (b), Section 13.142, Water Code,
6 is amended to read as follows:

7 (b) The utility commission shall adopt rules concerning
8 payment of utility bills that are consistent with Chapter 2251,
9 Government Code.

10 SECTION 2.23. Section 13.144, Water Code, is amended to
11 read as follows:

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

26 SECTION 2.24. Subsection (a), Section 13.147, Water Code,
27 is amended to read as follows:

1 (a) A retail public utility providing water service may
2 contract with a retail public utility providing sewer service to
3 bill and collect the sewer service provider's fees and payments as
4 part of a consolidated process with the billing and collection of
5 the water service provider's fees and payments. The water service
6 provider may provide that service only for customers who are served
7 by both providers in an area covered by both providers'
8 certificates of public convenience and necessity. If the water
9 service provider refuses to enter into a contract under this
10 section or if the water service provider and sewer service provider
11 cannot agree on the terms of a contract, the sewer service provider
12 may petition the utility commission to issue an order requiring the
13 water service provider to provide that service.

14 SECTION 2.25. Subsection (b), Section 13.181, Water Code,
15 is amended to read as follows:

16 (b) Subject to this chapter, the utility commission has all
17 authority and power of the state to ensure compliance with the
18 obligations of utilities under this chapter. For this purpose the
19 regulatory authority may fix and regulate rates of utilities,
20 including rules and regulations for determining the classification
21 of customers and services and for determining the applicability of
22 rates. A rule or order of the regulatory authority may not conflict
23 with the rulings of any federal regulatory body. The utility
24 commission may adopt rules which authorize a utility which is
25 permitted under Section 13.242(c) to provide service without a
26 certificate of public convenience and necessity to request or
27 implement a rate increase and operate according to rules,

1 regulations, and standards of service other than those otherwise
2 required under this chapter provided that rates are just and
3 reasonable for customers and the utility and that service is safe,
4 adequate, efficient, and reasonable.

5 SECTION 2.26. Subsections (c) and (d), Section 13.182,
6 Water Code, are amended to read as follows:

7 (c) For ratemaking purposes, the utility commission may
8 treat two or more municipalities served by a utility as a single
9 class wherever the utility commission considers that treatment to
10 be appropriate.

11 (d) The utility commission by rule shall establish a
12 preference that rates under a consolidated tariff be consolidated
13 by region. The regions under consolidated tariffs must be
14 determined on a case-by-case basis.

15 SECTION 2.27. Subsection (d), Section 13.183, Water Code,
16 is amended to read as follows:

17 (d) A regulatory authority other than the utility
18 commission may not approve an acquisition adjustment for a system
19 purchased before the effective date of an ordinance authorizing
20 acquisition adjustments.

21 SECTION 2.28. Subsection (a), Section 13.184, Water Code,
22 is amended to read as follows:

23 (a) Unless the utility commission establishes alternate
24 rate methodologies in accordance with Section 13.183(c), the
25 utility commission may not prescribe any rate that will yield more
26 than a fair return on the invested capital used and useful in
27 rendering service to the public. The governing body of a

1 municipality exercising its original jurisdiction over rates and
2 services may use alternate ratemaking methodologies established by
3 ordinance or by utility commission rule in accordance with Section
4 13.183(c). Unless the municipal regulatory authority uses
5 alternate ratemaking methodologies established by ordinance or by
6 utility commission rule in accordance with Section 13.183(c), it
7 may not prescribe any rate that will yield more than a fair return
8 on the invested capital used and useful in rendering service to the
9 public.

10 SECTION 2.29. Subsections (d), (k), and (o), Section
11 13.187, Water Code, are amended to read as follows:

12 (d) Except as provided by Subsection (d-1), if the
13 application or the statement of intent is not substantially
14 complete or does not comply with the regulatory authority's rules,
15 it may be rejected and the effective date of the rate change may be
16 suspended until a properly completed application is accepted by the
17 regulatory authority and a proper statement of intent is provided.
18 The utility commission may also suspend the effective date of any
19 rate change if the utility does not have a certificate of public
20 convenience and necessity or a completed application for a
21 certificate or to transfer a certificate pending before the utility
22 commission or if the utility is delinquent in paying the assessment
23 and any applicable penalties or interest required by Section
24 5.701(n) [~~of this code~~].

25 (k) If the regulatory authority receives at least the number
26 of complaints from ratepayers required for the regulatory authority
27 to set a hearing under Subsection (e), the regulatory authority

1 may, pending the hearing and a decision, suspend the date the rate
2 change would otherwise be effective. Except as provided by
3 Subsection (d-1), the proposed rate may not be suspended for longer
4 than:

5 (1) 90 days by a local regulatory authority; or

6 (2) 150 days by the utility commission.

7 (o) If a regulatory authority other than the utility
8 commission establishes interim rates or an escrow account, the
9 regulatory authority must make a final determination on the rates
10 not later than the first anniversary of the effective date of the
11 interim rates or escrowed rates or the rates are automatically
12 approved as requested by the utility.

13 SECTION 2.30. Subsection (a), Section 13.188, Water Code,
14 is amended to read as follows:

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

25 SECTION 2.31. Subsections (a) and (d), Section 13.241,
26 Water Code, are amended to read as follows:

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

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

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

10 SECTION 2.32. Subsections (a) and (c), Section 13.242,
11 Water Code, are amended to read as follows:

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

26 (c) The utility commission may by rule allow a municipality
27 or utility or water supply corporation to render retail water

1 service without a certificate of public convenience and necessity
2 if the municipality has given notice under Section 13.255 [~~of this~~
3 ~~code~~] that it intends to provide retail water service to an area or
4 if the utility or water supply corporation has less than 15
5 potential connections and is not within the certificated area of
6 another retail public utility.

7 SECTION 2.33. Section 13.244, Water Code, is amended to
8 read as follows:

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

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

22 (c) Each applicant for a certificate or for an amendment
23 shall file with the utility commission evidence required by the
24 commission to show that the applicant has received the required
25 consent, franchise, or permit of the proper municipality or other
26 public authority.

27 (d) An application for a certificate of public convenience

1 and necessity or for an amendment to a certificate must contain:

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

3 (A) a metes and bounds survey certified by a
4 licensed state land surveyor or a registered professional land
5 surveyor;

6 (B) the Texas State Plane Coordinate System;

7 (C) verifiable landmarks, including a road,
8 creek, or railroad line; or

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

11 (2) a description of any requests for service in the
12 proposed service area;

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

16 (4) a description of the sources of funding for all
17 facilities;

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

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

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

24 (A) at least 50 acres; and

25 (B) wholly or partially located within the
26 proposed service area; and

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

1 SECTION 2.34. Subsections (b), (c), and (e), Section
2 13.245, Water Code, are amended to read as follows:

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

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

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

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

21 (e) If the utility commission makes a decision under
22 Subsection (d) regarding the grant of a certificate of public
23 convenience and necessity without the consent of the municipality,
24 the municipality or the retail public utility may appeal the
25 decision to the appropriate state district court. The court shall
26 hear the petition within 120 days after the date the petition is
27 filed. On final disposition, the court may award reasonable fees to

1 the prevailing party.

2 SECTION 2.35. Subsection (c), Section 13.2451, Water Code,
3 is amended to read as follows:

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

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

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

16 SECTION 2.36. Subsections (a), (a-1), (b), (c), (d), (f),
17 (h), and (i), Section 13.246, Water Code, are amended to read as
18 follows:

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

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

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

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

26 (c) Certificates of public convenience and necessity and
27 amendments to certificates shall be granted by the utility

1 commission on a nondiscriminatory basis after consideration by the
2 utility commission of:

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

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

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

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

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

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

22 (7) environmental integrity;

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

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

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

5 (f) If two or more retail public utilities or water supply
6 or sewer service corporations 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 and otherwise meet the requirements for obtaining a new
10 certificate, the utility commission shall grant the certificate to
11 the retail public utility or water supply or sewer service
12 corporation that is more capable financially, managerially, and
13 technically of providing continuous and adequate service.

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

27 (i) A landowner is not entitled to make an election under

1 Subsection (h) but is entitled to contest the inclusion of the
2 landowner's property in the proposed service area at a hearing held
3 by the utility commission regarding the application if the proposed
4 service area is located within the boundaries or extraterritorial
5 jurisdiction of a municipality with a population of more than
6 500,000 and the municipality or a utility owned by the municipality
7 is the applicant.

8 SECTION 2.37. Subsection (a), Section 13.247, Water Code,
9 is amended to read as follows:

10 (a) If an area is within the boundaries of a municipality,
11 all retail public utilities certified or entitled to certification
12 under this chapter to provide service or operate facilities in that
13 area may continue and extend service in its area of public
14 convenience and necessity within the area pursuant to the rights
15 granted by its certificate and this chapter, unless the
16 municipality exercises its power of eminent domain to acquire the
17 property of the retail public utility under Subsection (d). Except
18 as provided by Section 13.255, a municipally owned or operated
19 utility may not provide retail water and sewer utility service
20 within the area certificated to another retail public utility
21 without first having obtained from the utility commission a
22 certificate of public convenience and necessity that includes the
23 areas to be served.

24 SECTION 2.38. Section 13.248, Water Code, is amended to
25 read as follows:

26 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts
27 between retail public utilities designating areas to be served and

1 customers to be served by those retail public utilities, when
2 approved by the utility commission after public notice and hearing,
3 are valid and enforceable and are incorporated into the appropriate
4 areas of public convenience and necessity.

5 SECTION 2.39. Subsections (b), (c), and (e), Section
6 13.250, Water Code, are amended to read as follows:

7 (b) Unless the utility commission issues a certificate that
8 neither the present nor future convenience and necessity will be
9 adversely affected, the holder of a certificate or a person who
10 possesses facilities used to provide utility service shall not
11 discontinue, reduce, or impair service to a certified service area
12 or part of a certified service area except for:

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

16 (2) nonpayment of charges for sewer service provided
17 by another retail public utility under an agreement between the
18 retail public utility and the certificate holder or a person who
19 possesses facilities used to provide utility service or under a
20 utility commission-ordered arrangement between the two service
21 providers;

22 (3) nonuse; or

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

25 (c) Any discontinuance, reduction, or impairment of
26 service, whether with or without approval of the utility
27 commission, shall be in conformity with and subject to conditions,

1 restrictions, and limitations that the utility commission
2 prescribes.

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

6 SECTION 2.40. Subsection (d), Section 13.2502, Water Code,
7 is amended to read as follows:

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

10 SECTION 2.41. Section 13.251, Water Code, is amended to
11 read as follows:

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

22 SECTION 2.42. Section 13.252, Water Code, is amended to
23 read as follows:

24 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.
25 If a retail public utility in constructing or extending a line,
26 plant, or system interferes or attempts to interfere with the
27 operation of a line, plant, or system of any other retail public

1 utility, or furnishes, makes available, renders, or extends retail
2 water or sewer utility service to any portion of the service area of
3 another retail public utility that has been granted or is not
4 required to possess a certificate of public convenience and
5 necessity, the utility commission may issue an order prohibiting
6 the construction, extension, or provision of service or prescribing
7 terms and conditions for locating the line, plant, or system
8 affected or for the provision of the service.

9 SECTION 2.43. Section 13.253, Water Code, is amended to
10 read as follows:

11 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING
12 SERVICE. (a) After notice and hearing, the utility commission or
13 the commission may:

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

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

24 (B) develop, implement, and follow financial,
25 managerial, and technical practices that are acceptable to the
26 utility commission to ensure that continuous and adequate service
27 is provided to any areas currently certificated to the retail

1 public utility if the retail public utility has not provided
2 continuous and adequate service to any of those areas and, for a
3 utility, to provide financial assurance of the utility's ability to
4 operate the system in accordance with applicable laws and rules, in
5 the form of a bond or other financial assurance in a form and amount
6 specified by the utility commission;

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

10 (3) order a public utility or water supply or sewer
11 service corporation that has not demonstrated that it can provide
12 continuous and adequate service from its drinking water source or
13 sewer treatment facility to obtain service sufficient to meet its
14 obligation to provide continuous and adequate service on at least a
15 wholesale basis from another consenting utility service provider;
16 or

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

19 (b) If the utility commission has reason to believe that
20 improvements and repairs to a water or sewer service system are
21 necessary to enable a retail public utility to provide continuous
22 and adequate service in any portion of its service area and the
23 retail public utility has provided financial assurance under
24 Section 341.0355, Health and Safety Code, or under this chapter,
25 the utility commission, after providing to the retail public
26 utility notice and an opportunity to be heard by the commissioners
27 at a [~~commission~~] meeting of the utility commission, may

1 immediately order specified improvements and repairs to the water
2 or sewer system, the costs of which may be paid by the bond or other
3 financial assurance in an amount determined by the utility
4 commission not to exceed the amount of the bond or financial
5 assurance. The order requiring the improvements may be an
6 emergency order if it is issued after the retail public utility has
7 had an opportunity to be heard [~~by the commissioners~~] at a
8 [~~commission~~] meeting of the utility commission. After notice and
9 hearing, the utility commission may require a retail public utility
10 to obligate additional money to replace the financial assurance
11 used for the improvements.

12 SECTION 2.44. Section 13.254, Water Code, is amended to
13 read as follows:

14 Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE.

15 (a) The utility commission at any time after notice and hearing
16 may, on its own motion or on receipt of a petition described by
17 Subsection (a-1), revoke or amend any certificate of public
18 convenience and necessity with the written consent of the
19 certificate holder or if the utility commission [~~it~~] finds that:

20 (1) the certificate holder has never provided, is no
21 longer providing, is incapable of providing, or has failed to
22 provide continuous and adequate service in the area, or part of the
23 area, covered by the certificate;

24 (2) in an affected county as defined in Section
25 16.341, the cost of providing service by the certificate holder is
26 so prohibitively expensive as to constitute denial of service,
27 provided that, for commercial developments or for residential

1 developments started after September 1, 1997, in an affected county
2 as defined in Section 16.341, the fact that the cost of obtaining
3 service from the currently certificated retail public utility makes
4 the development economically unfeasible does not render such cost
5 prohibitively expensive in the absence of other relevant factors;

6 (3) the certificate holder has agreed in writing to
7 allow another retail public utility to provide service within its
8 service area, except for an interim period, without amending its
9 certificate; or

10 (4) the certificate holder has failed to file a cease
11 and desist action pursuant to Section 13.252 within 180 days of the
12 date that it became aware that another retail public utility was
13 providing service within its service area, unless the certificate
14 holder demonstrates good cause for its failure to file such action
15 within the 180 days.

16 (a-1) As an alternative to decertification under Subsection
17 (a), the owner of a tract of land that is at least 50 acres and that
18 is not in a platted subdivision actually receiving water or sewer
19 service may petition the utility commission under this subsection
20 for expedited release of the area from a certificate of public
21 convenience and necessity so that the area may receive service from
22 another retail public utility. The petitioner shall deliver, via
23 certified mail, a copy of the petition to the certificate holder,
24 who may submit information to the utility commission to controvert
25 information submitted by the petitioner. The petitioner must
26 demonstrate that:

27 (1) a written request for service, other than a

1 request for standard residential or commercial service, has been
2 submitted to the certificate holder, identifying:

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

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

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

8 (D) any additional information requested by the
9 certificate holder that is reasonably related to determination of
10 the capacity or cost for providing the service;

11 (2) the certificate holder has been allowed at least
12 90 calendar days to review and respond to the written request and
13 the information it contains;

14 (3) the certificate holder:

15 (A) has refused to provide the service;

16 (B) is not capable of providing the service on a
17 continuous and adequate basis within the timeframe, at the level,
18 or in the manner reasonably needed or requested by current and
19 projected service demands in the area; or

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

24 (4) the alternate retail public utility from which the
25 petitioner will be requesting service is capable of providing
26 continuous and adequate service within the timeframe, at the level,
27 and in the manner reasonably needed or requested by current and

1 projected service demands in the area.

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

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

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

12 (a-3) Within 90 calendar days from the date the utility
13 commission determines the petition filed pursuant to Subsection
14 (a-1) to be administratively complete, the utility commission shall
15 grant the petition unless the utility commission makes an express
16 finding that the petitioner failed to satisfy the elements required
17 in Subsection (a-1) and supports its finding with separate findings
18 and conclusions for each element based solely on the information
19 provided by the petitioner and the certificate holder. The utility
20 commission may grant or deny a petition subject to terms and
21 conditions specifically related to the service request of the
22 petitioner and all relevant information submitted by the petitioner
23 and the certificate holder. In addition, the utility commission
24 may require an award of compensation as otherwise provided by this
25 section.

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

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

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

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

14 (d) A retail public utility may not in any way render retail
15 water or sewer service directly or indirectly to the public in an
16 area that has been decertified under this section without providing
17 compensation for any property that the utility commission
18 determines is rendered useless or valueless to the decertified
19 retail public utility as a result of the decertification.

20 (e) The determination of the monetary amount of
21 compensation, if any, shall be determined at the time another
22 retail public utility seeks to provide service in the previously
23 decertified area and before service is actually provided. The
24 utility commission shall ensure that the monetary amount of
25 compensation is determined not later than the 90th calendar day
26 after the date on which a retail public utility notifies the utility
27 commission of its intent to provide service to the decertified

1 area.

2 (f) The monetary amount shall be determined by a qualified
3 individual or firm serving as independent appraiser agreed upon by
4 the decertified retail public utility and the retail public utility
5 seeking to serve the area. The determination of compensation by the
6 independent appraiser shall be binding on the utility commission.
7 The costs of the independent appraiser shall be borne by the retail
8 public utility seeking to serve the area.

9 (g) For the purpose of implementing this section, the value
10 of real property owned and utilized by the retail public utility for
11 its facilities shall be determined according to the standards set
12 forth in Chapter 21, Property Code, governing actions in eminent
13 domain and the value of personal property shall be determined
14 according to the factors in this subsection. The factors ensuring
15 that the compensation to a retail public utility is just and
16 adequate shall include: the amount of the retail public utility's
17 debt allocable for service to the area in question; the value of the
18 service facilities of the retail public utility located within the
19 area in question; the amount of any expenditures for planning,
20 design, or construction of service facilities that are allocable to
21 service to the area in question; the amount of the retail public
22 utility's contractual obligations allocable to the area in
23 question; any demonstrated impairment of service or increase of
24 cost to consumers of the retail public utility remaining after the
25 decertification; the impact on future revenues lost from existing
26 customers; necessary and reasonable legal expenses and
27 professional fees; and other relevant factors. The utility

1 commission shall adopt rules governing the evaluation of these
2 factors.

3 (g-1) If the retail public utilities cannot agree on an
4 independent appraiser within 10 calendar days after the date on
5 which the retail public utility notifies the utility commission of
6 its intent to provide service to the decertified area, each retail
7 public utility shall engage its own appraiser at its own expense,
8 and each appraisal shall be submitted to the utility commission
9 within 60 calendar days. After receiving the appraisals, the
10 utility commission shall appoint a third appraiser who shall make a
11 determination of the compensation within 30 days. The
12 determination may not be less than the lower appraisal or more than
13 the higher appraisal. Each retail public utility shall pay half the
14 cost of the third appraisal.

15 SECTION 2.45. Subsections (a), (b), (c), (d), (e), (g-1),
16 (k), (l), and (m), Section 13.255, Water Code, are amended to read
17 as follows:

18 (a) In the event that an area is incorporated or annexed by a
19 municipality, either before or after the effective date of this
20 section, the municipality and a retail public utility that provides
21 water or sewer service to all or part of the area pursuant to a
22 certificate of convenience and necessity may agree in writing that
23 all or part of the area may be served by a municipally owned
24 utility, by a franchised utility, or by the retail public utility.
25 In this section, the phrase "franchised utility" shall mean a
26 retail public utility that has been granted a franchise by a
27 municipality to provide water or sewer service inside municipal

1 boundaries. The agreement may provide for single or dual
2 certification of all or part of the area, for the purchase of
3 facilities or property, and for such other or additional terms that
4 the parties may agree on. If a franchised utility is to serve the
5 area, the franchised utility shall also be a party to the agreement.
6 The executed agreement shall be filed with the utility commission,
7 and the utility commission, on receipt of the agreement, shall
8 incorporate the terms of the agreement into the respective
9 certificates of convenience and necessity of the parties to the
10 agreement.

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

24 (c) The utility commission shall grant single certification
25 to the municipality. The utility commission shall also determine
26 whether single certification as requested by the municipality would
27 result in property of a retail public utility being rendered

1 useless or valueless to the retail public utility, and shall
2 determine in its order the monetary amount that is adequate and just
3 to compensate the retail public utility for such property. If the
4 municipality in its application has requested the transfer of
5 specified property of the retail public utility to the municipality
6 or to a franchised utility, the utility commission shall also
7 determine in its order the adequate and just compensation to be paid
8 for such property pursuant to the provisions of this section,
9 including an award for damages to property remaining in the
10 ownership of the retail public utility after single certification.
11 The order of the utility commission shall not be effective to
12 transfer property. A transfer of property may only be obtained
13 under this section by a court judgment rendered pursuant to
14 Subsection (d) or (e) [~~of this section~~]. The grant of single
15 certification by the utility commission shall go into effect on the
16 date the municipality or franchised utility, as the case may be,
17 pays adequate and just compensation pursuant to court order, or
18 pays an amount into the registry of the court or to the retail
19 public utility under Subsection (f). If the court judgment
20 provides that the retail public utility is not entitled to any
21 compensation, the grant of single certification shall go into
22 effect when the court judgment becomes final. The municipality or
23 franchised utility must provide to each customer of the retail
24 public utility being acquired an individual written notice within
25 60 days after the effective date for the transfer specified in the
26 court judgment. The notice must clearly advise the customer of the
27 identity of the new service provider, the reason for the transfer,

1 the rates to be charged by the new service provider, and the
2 effective date of those rates.

3 (d) In the event the final order of the utility commission
4 is not appealed within 30 days, the municipality may request the
5 district court of Travis County to enter a judgment consistent with
6 the order of the utility commission. In such event, the court shall
7 render a judgment that:

8 (1) transfers to the municipally owned utility or
9 franchised utility title to property to be transferred to the
10 municipally owned utility or franchised utility as delineated by
11 the utility commission's final order and property determined by the
12 utility commission to be rendered useless or valueless by the
13 granting of single certification; and

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

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

25 (1) transfers to the municipally owned utility or
26 franchised utility title to property requested by the municipality
27 to be transferred to the municipally owned utility or franchised

1 utility and located within the singly certificated area and
2 property determined by the court or jury to be rendered useless or
3 valueless by the granting of single certification; and

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

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

16 (k) The following conditions apply when a municipality or
17 franchised utility makes an application to acquire the service area
18 or facilities of a retail public utility described in Subsection
19 (j)(2):

20 (1) the utility commission or court must determine
21 that the service provided by the retail public utility is
22 substandard or its rates are unreasonable in view of the reasonable
23 expenses of the utility;

24 (2) if the municipality abandons its application, the
25 court or the utility commission is authorized to award to the retail
26 public utility its reasonable expenses related to the proceeding
27 hereunder, including attorney fees; and

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

4 (1) For an area incorporated by a municipality, the
5 compensation provided under Subsection (g) shall be determined by a
6 qualified individual or firm to serve as independent appraiser, who
7 shall be selected by the affected retail public utility, and the
8 costs of the appraiser shall be paid by the municipality. For an
9 area annexed by a municipality, the compensation provided under
10 Subsection (g) shall be determined by a qualified individual or
11 firm to which the municipality and the retail public utility agree
12 to serve as independent appraiser. If the retail public utility and
13 the municipality are unable to agree on a single individual or firm
14 to serve as the independent appraiser before the 11th day after the
15 date the retail public utility or municipality notifies the other
16 party of the impasse, the retail public utility and municipality
17 each shall appoint a qualified individual or firm to serve as
18 independent appraiser. On or before the 10th business day after the
19 date of their appointment, the independent appraisers shall meet to
20 reach an agreed determination of the amount of compensation. If the
21 appraisers are unable to agree on a determination before the 16th
22 business day after the date of their first meeting under this
23 subsection, the retail public utility or municipality may petition
24 the utility commission or a person the utility commission
25 designates for the purpose to appoint a third qualified independent
26 appraiser to reconcile the appraisals of the two originally
27 appointed appraisers. The determination of the third appraiser may

1 not be less than the lesser or more than the greater of the two
2 original appraisals. The costs of the independent appraisers for
3 an annexed area shall be shared equally by the retail public utility
4 and the municipality. The determination of compensation under this
5 subsection is binding on the utility commission.

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

10 SECTION 2.46. Section 13.2551, Water Code, is amended to
11 read as follows:

12 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
13 condition to decertification or single certification under Section
14 13.254 or 13.255, and on request by an affected retail public
15 utility, the utility commission may order:

16 (1) the retail public utility seeking to provide
17 service to a decertified area to serve the entire service area of
18 the retail public utility that is being decertified; and

19 (2) the transfer of the entire certificate of public
20 convenience and necessity of a partially decertified retail public
21 utility to the retail public utility seeking to provide service to
22 the decertified area.

23 (b) The utility commission shall order service to the entire
24 area under Subsection (a) if the utility commission finds that the
25 decertified retail public utility will be unable to provide
26 continuous and adequate service at an affordable cost to the
27 remaining customers.

1 (c) The utility commission shall require the retail public
2 utility seeking to provide service to the decertified area to
3 provide continuous and adequate service to the remaining customers
4 at a cost comparable to the cost of that service to its other
5 customers and shall establish the terms under which the service
6 must be provided. The terms may include:

- 7 (1) transferring debt and other contract obligations;
- 8 (2) transferring real and personal property;
- 9 (3) establishing interim service rates for affected
10 customers during specified times; and
- 11 (4) other provisions necessary for the just and
12 reasonable allocation of assets and liabilities.

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

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

21 SECTION 2.47. Subsections (e), (i), (r), and (s), Section
22 13.257, Water Code, are amended to read as follows:

23 (e) The notice must be given to the prospective purchaser
24 before the execution of a binding contract of purchase and sale.
25 The notice may be given separately or as an addendum to or paragraph
26 of the contract. If the seller fails to provide the notice required
27 by this section, the purchaser may terminate the contract. If the

1 seller provides the notice at or before the closing of the purchase
2 and sale contract and the purchaser elects to close even though the
3 notice was not timely provided before the execution of the
4 contract, it is conclusively presumed that the purchaser has waived
5 all rights to terminate the contract and recover damages or pursue
6 other remedies or rights under this section. Notwithstanding any
7 provision of this section to the contrary, a seller, title
8 insurance company, real estate broker, or examining attorney, or an
9 agent, representative, or person acting on behalf of the seller,
10 company, broker, or attorney, is not liable for damages under
11 Subsection (m) or (n) or liable for any other damages to any person
12 for:

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

17 (A) the utility service provider did not file the
18 map of the certificated service area in the real property records of
19 the county in which the service area is located and with the utility
20 commission depicting the boundaries of the service area of the
21 utility service provider as shown in the real property records of
22 the county in which the service area is located; and

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

26 (2) unintentionally providing a notice required by
27 this section that is incorrect under the circumstances before the

1 execution of a binding contract of purchase and sale or at or before
2 the closing of the purchase and sale contract.

3 (i) If the notice is given at closing as provided by
4 Subsection (g), a purchaser, or the purchaser's heirs, successors,
5 or assigns, may not maintain an action for damages or maintain an
6 action against a seller, title insurance company, real estate
7 broker, or lienholder, or any agent, representative, or person
8 acting on behalf of the seller, company, broker, or lienholder, by
9 reason of the seller's use of the information filed with the utility
10 commission by the utility service provider or the seller's use of
11 the map of the certificated service area of the utility service
12 provider filed in the real property records to determine whether
13 the property to be purchased is within the certificated service
14 area of the utility service provider. An action may not be
15 maintained against a title insurance company for the failure to
16 disclose that the described real property is included within the
17 certificated service area of a utility service provider if the
18 utility service provider did not file in the real property records
19 or with the utility commission the map of the certificated service
20 area.

21 (r) A utility service provider shall:

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

1 (A) a metes and bounds survey certified by a
2 licensed state land surveyor or a registered professional land
3 surveyor;

4 (B) the Texas State Plane Coordinate System;

5 (C) verifiable landmarks, including a road,
6 creek, or railroad line; or

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

9 (2) submit to the executive director of the utility
10 commission evidence of the recording.

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

21 SECTION 2.48. Subsections (a) through (g), Section 13.301,
22 Water Code, are amended to read as follows:

23 (a) A utility or a water supply or sewer service
24 corporation, on or before the 120th day before the effective date of
25 a sale, acquisition, lease, or rental of a water or sewer system
26 that is required by law to possess a certificate of public
27 convenience and necessity or the effective date of a merger or

1 consolidation with such a utility or water supply or sewer service
2 corporation, shall:

3 (1) file a written application with the utility
4 commission; and

5 (2) unless public notice is waived by the executive
6 director of the utility commission for good cause shown, give
7 public notice of the action.

8 (b) The utility commission may require that the person
9 purchasing or acquiring the water or sewer system demonstrate
10 adequate financial, managerial, and technical capability for
11 providing continuous and adequate service to the requested area and
12 any areas currently certificated to the person.

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

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

22 (e) Before the expiration of the 120-day notification
23 period, the executive director of the utility commission shall
24 notify all known parties to the transaction and the Office of Public
25 Utility Counsel whether ~~[of]~~ the executive director of the utility
26 commission will ~~[director's decision whether to]~~ request that the
27 utility commission hold a public hearing to determine if the

1 transaction will serve the public interest. The executive director
2 of the utility commission may request a hearing if:

3 (1) the application filed with the utility commission
4 or the public notice was improper;

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

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

12 (A) noncompliance with the requirements of the
13 utility commission, the commission, or the [~~Texas~~] Department of
14 State Health Services; or

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

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

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

26 (f) Unless the executive director of the utility commission
27 requests that a public hearing be held, the sale, acquisition,

1 lease, or rental may be completed as proposed:

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

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

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

12 SECTION 2.49. Section 13.302, Water Code, is amended to
13 read as follows:

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

21 (b) The utility commission may require that a person
22 acquiring a controlling interest in a utility demonstrate adequate
23 financial, managerial, and technical capability for providing
24 continuous and adequate service to the requested area and any areas
25 currently certificated to the person.

26 (c) If the person acquiring a controlling interest cannot
27 demonstrate adequate financial capability, the utility commission

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

4 (d) The executive director of the utility commission may
5 request that the utility commission hold a public hearing on the
6 transaction if the executive director of the utility commission
7 believes that a criterion prescribed by Section 13.301(e) applies.

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

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

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

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

22 SECTION 2.50. Section 13.303, Water Code, is amended to
23 read as follows:

24 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may
25 not loan money, stocks, bonds, notes, or other evidences of
26 indebtedness to any corporation or person owning or holding
27 directly or indirectly any stock of the utility unless the utility

1 reports the transaction to the utility commission within 60 days
2 after the date of the transaction.

3 SECTION 2.51. Section 13.304, Water Code, is amended to
4 read as follows:

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

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

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

24 SECTION 2.52. Section 13.341, Water Code, is amended to
25 read as follows:

26 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The
27 utility commission has jurisdiction over affiliated interests

1 having transactions with utilities under the jurisdiction of the
2 utility commission to the extent of access to all accounts and
3 records of those affiliated interests relating to such
4 transactions, including but in no way limited to accounts and
5 records of joint or general expenses, any portion of which may be
6 applicable to those transactions.

7 SECTION 2.53. Section 13.342, Water Code, is amended to
8 read as follows:

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

15 SECTION 2.54. Subsection (a), Section 13.343, Water Code,
16 is amended to read as follows:

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

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

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

26 SECTION 2.55. Section 13.381, Water Code, is amended to
27 read as follows:

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

4 SECTION 2.56. Subsection (a), Section 13.382, Water Code,
5 is amended to read as follows:

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

14 SECTION 2.57. Section 13.411, Water Code, is amended to
15 read as follows:

16 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE.

17 (a) If the utility commission or the commission has reason to
18 believe that any retail public utility or any other person or
19 corporation is engaged in or is about to engage in any act in
20 violation of this chapter or of any order or rule of the utility
21 commission or the commission entered or adopted under this chapter
22 or that any retail public utility or any other person or corporation
23 is failing to comply with this chapter or with any rule or order,
24 the attorney general on request of the utility commission or the
25 commission, in addition to any other remedies provided in this
26 chapter, shall bring an action in a court of competent jurisdiction
27 in the name of and on behalf of the utility commission or the

1 commission against the retail public utility or other person or
2 corporation to enjoin the commencement or continuation of any act
3 or to require compliance with this chapter or the rule or order.

4 (b) If the executive director of the utility commission or
5 the executive director of the commission has reason to believe that
6 the failure of the owner or operator of a water utility to properly
7 operate, maintain, or provide adequate facilities presents an
8 imminent threat to human health or safety, the executive director
9 of the utility commission or the executive director of the
10 commission shall immediately:

- 11 (1) notify the utility's representative; and
12 (2) initiate enforcement action consistent with:
13 (A) this subchapter; and
14 (B) procedural rules adopted by the utility
15 commission or the commission.

16 SECTION 2.58. Section 13.4115, Water Code, is amended to
17 read as follows:

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

1 SECTION 2.59. Subsections (a), (f), and (g), Section
2 13.412, Water Code, are amended to read as follows:

3 (a) At the request of the utility commission or the
4 commission, the attorney general shall bring suit for the
5 appointment of a receiver to collect the assets and carry on the
6 business of a water or sewer utility that:

7 (1) has abandoned operation of its facilities;

8 (2) informs the utility commission or the commission
9 that the owner is abandoning the system;

10 (3) violates a final order of the utility commission
11 or the commission; or

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

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

17 (1) failure to pay a bill or obligation owed to a
18 retail public utility or to an electric or gas utility with the
19 result that the utility service provider has issued a notice of
20 discontinuance of necessary services;

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

23 (3) failure to adequately maintain facilities,
24 resulting in potential health hazards, extended outages, or
25 repeated service interruptions;

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

1 (5) failure to secure an alternative available water
2 supply during an outage;

3 (6) displaying a pattern of hostility toward or
4 repeatedly failing to respond to the utility commission or the
5 commission or the utility's customers; and

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

9 (g) Notwithstanding Section 64.021, Civil Practice and
10 Remedies Code, a receiver appointed under this section may seek
11 [~~commission~~] approval from the utility commission and the
12 commission to acquire the water or sewer utility's facilities and
13 transfer the utility's certificate of convenience and necessity.
14 The receiver must apply in accordance with Subchapter H.

15 SECTION 2.60. Section 13.413, Water Code, is amended to
16 read as follows:

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

- 24 (1) payment of fees to the receiver for his services;
25 (2) payment of fees to attorneys, accountants,
26 engineers, or any other person or entity that provides goods or
27 services necessary to the operation of the receivership; and

1 (3) payment of costs incurred in ensuring that any
2 property owned or controlled by a water or sewer utility is not used
3 in violation of a final order of the utility commission or the
4 commission.

5 SECTION 2.61. Section 13.4131, Water Code, is amended to
6 read as follows:

7 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The
8 utility commission, after providing to the utility notice and an
9 opportunity for a hearing, may place a utility under supervision
10 for gross or continuing mismanagement, gross or continuing
11 noncompliance with this chapter or a rule adopted under this
12 chapter [~~commission rules~~], or noncompliance with an order issued
13 under this chapter [~~commission orders~~].

14 (b) While supervising a utility, the utility commission may
15 require the utility to abide by conditions and requirements
16 prescribed by the utility commission, including:

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

26 (c) While supervising a utility, the utility commission may
27 require that the utility obtain [~~commission~~] approval from the

1 utility commission before taking any action that may be restricted
2 under Subsection (b) [~~of this section~~]. Any action or transaction
3 which occurs without [~~commission~~] approval may be voided by the
4 utility commission.

5 SECTION 2.62. Subsections (a) and (c), Section 13.4133,
6 Water Code, are amended to read as follows:

7 (a) Notwithstanding the requirements of Section 13.187 [~~of~~
8 ~~this code~~], the utility commission may authorize an emergency rate
9 increase for a utility for which a person has been appointed under
10 Section 13.4132 [~~of this code~~] or for which a receiver has been
11 appointed under Section 13.412 [~~of this code~~] if the increase is
12 necessary to ensure the provision of continuous and adequate
13 services to the utility's customers.

14 (c) The utility commission shall schedule a hearing to
15 establish a final rate within 15 months after the date on which an
16 emergency rate increase takes effect. The utility commission shall
17 require the utility to provide notice of the hearing to each
18 customer and to the Office of Public Utility Counsel. The
19 additional revenues collected under an emergency rate increase are
20 subject to refund if the utility commission finds that the rate
21 increase was larger than necessary to ensure continuous and
22 adequate service.

23 SECTION 2.63. Subsections (a) and (c), Section 13.414,
24 Water Code, are amended to read as follows:

25 (a) Any retail public utility or affiliated interest that
26 violates this chapter, fails to perform a duty imposed on it, or
27 fails, neglects, or refuses to obey an order, rule, direction, or

1 requirement of the utility commission or the commission or decree
2 or judgment of a court is subject to a civil penalty of not less than
3 \$100 nor more than \$5,000 for each violation.

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

8 SECTION 2.64. Subsections (a) through (k) and (m), Section
9 13.4151, Water Code, are amended to read as follows:

10 (a) If a person, affiliated interest, or entity subject to
11 the jurisdiction of the utility commission or the commission
12 violates this chapter or a rule or order adopted under this chapter,
13 the utility commission or the commission, as applicable, may assess
14 a penalty against that person, affiliated interest, or entity as
15 provided by this section. The penalty may be in an amount not to
16 exceed \$500 a day. Each day a violation continues may be considered
17 a separate violation.

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

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

22 (2) with respect to the alleged violator:

23 (A) the history and extent of previous
24 violations;

25 (B) the degree of culpability, including whether
26 the violation was attributable to mechanical or electrical failures
27 and whether the violation could have been reasonably anticipated

1 and avoided;

2 (C) the demonstrated good faith, including
3 actions taken by the person, affiliated interest, or entity to
4 correct the cause of the violation;

5 (D) any economic benefit gained through the
6 violation; and

7 (E) the amount necessary to deter future
8 violations; and

9 (3) any other matters that justice requires.

10 (c) If, after examination of a possible violation and the
11 facts surrounding that possible violation, the executive director
12 of the utility commission or the executive director of the
13 commission concludes that a violation has occurred, the executive
14 director of the utility commission or the executive director of the
15 commission may issue a preliminary report stating the facts on
16 which that conclusion is based, recommending that a penalty under
17 this section be imposed on the person, affiliated interest, or
18 retail public utility charged, and recommending the amount of that
19 proposed penalty. The executive director of the utility commission
20 or the executive director of the commission shall base the
21 recommended amount of the proposed penalty on the factors provided
22 by Subsection (b) [~~of this section~~], and shall analyze each factor
23 for the benefit of the agency [~~commission~~].

24 (d) Not later than the 10th day after the date on which the
25 report is issued, the executive director of the utility commission
26 or the executive director of the commission shall give written
27 notice of the report to the person, affiliated interest, or retail

1 public utility charged with the violation. The notice shall
2 include a brief summary of the charges, a statement of the amount of
3 the penalty recommended, and a statement of the right of the person,
4 affiliated interest, or retail public utility charged to a hearing
5 on the occurrence of the violation, the amount of the penalty, or
6 both.

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

13 (f) If the person, affiliated interest, or retail public
14 utility charged with the violation consents to the penalty
15 recommended in the report described by Subsection (d) [~~by the~~
16 ~~executive director~~] or fails to timely respond to the notice, the
17 utility commission or the commission by order shall assess that
18 penalty or order a hearing to be held on the findings and
19 recommendations in the [~~executive director's~~] report. If the
20 utility commission or the commission assesses the penalty
21 recommended by the report, the utility commission or the commission
22 shall give written notice to the person, affiliated interest, or
23 retail public utility charged of its decision.

24 (g) If the person, affiliated interest, or retail public
25 utility charged requests or the utility commission or the
26 commission orders a hearing, the agency [~~commission~~] shall call a
27 hearing and give notice of the hearing. As a result of the hearing,

1 the agency [~~commission~~] by order may find that a violation has
2 occurred and may assess a civil penalty, may find that a violation
3 has occurred but that no penalty should be assessed, or may find
4 that no violation has occurred. All proceedings under this
5 subsection are subject to Chapter 2001, Government Code. In making
6 any penalty decision, the agency [~~commission~~] shall analyze each of
7 the factors provided by Subsection (b) [~~of this section~~].

8 (h) The utility commission or the commission shall give
9 notice of its decision to the person, affiliated interest, or
10 retail public utility charged, and if the agency [~~commission~~] finds
11 that a violation has occurred and has assessed a penalty, the
12 agency [~~commission~~] shall give written notice to the person,
13 affiliated interest, or retail public utility charged of its
14 findings, of the amount of the penalty, and of the person's,
15 affiliated interest's, or retail public utility's right to judicial
16 review of the agency's [~~commission's~~] order. If the agency
17 [~~commission~~] is required to give notice of a penalty under this
18 subsection or Subsection (f) [~~of this section~~], the agency
19 [~~commission~~] shall file notice of the agency's [~~its~~] decision in
20 the Texas Register not later than the 10th day after the date on
21 which the decision is adopted.

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

- 26 (1) pay the penalty in full; or
27 (2) if the person, affiliated interest, or retail

1 public utility seeks judicial review of the fact of the violation,
2 the amount of the penalty, or both:

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

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

9 (j) Failure to forward the money to or to post the bond with
10 the agency [~~commission~~] within the time provided by Subsection (i)
11 [~~of this section~~] constitutes a waiver of all legal rights to
12 judicial review. If the person, affiliated interest, or retail
13 public utility charged fails to forward the money or post the bond
14 as provided by Subsection (i) [~~of this section~~], the agency
15 [~~commission~~] or the executive director of the agency may forward
16 the matter to the attorney general for enforcement.

17 (k) Judicial review of the order or decision of the agency
18 [~~commission~~] assessing the penalty shall be under the substantial
19 evidence rule and may be instituted by filing a petition with a
20 district court in Travis County, as provided by Subchapter G,
21 Chapter 2001, Government Code.

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

26 SECTION 2.65. Section 13.417, Water Code, is amended to
27 read as follows:

1 Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail
2 public utility fails to comply with any lawful order of the utility
3 commission or the commission or with any subpoena or subpoena duces
4 tecum or if any witness refuses to testify about any matter on which
5 he may be lawfully interrogated, the utility commission or the
6 commission may apply to any court of competent jurisdiction to
7 compel obedience by proceedings for contempt.

8 SECTION 2.66. Section 13.418, Water Code, is amended to
9 read as follows:

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

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

20 SECTION 2.67. Subdivision (7), Section 13.501, Water Code,
21 is amended to read as follows:

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

26 SECTION 2.68. Subsection (e), Section 13.502, Water Code,
27 is amended to read as follows:

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

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

8 (2) the property owner meets rental agreement
9 requirements established by the utility commission.

10 SECTION 2.69. Subsections (a), (b), and (e), Section
11 13.503, Water Code, are amended to read as follows:

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

15 (b) Notwithstanding any other law, the utility commission
16 shall adopt rules and standards under which an owner, operator, or
17 manager of an apartment house, manufactured home rental community,
18 or multiple use facility that is not individually metered for water
19 for each rental or dwelling unit may install submetering equipment
20 for each individual rental or dwelling unit for the purpose of
21 fairly allocating the cost of each individual rental or dwelling
22 unit's water consumption, including wastewater charges based on
23 water consumption. In addition to other appropriate safeguards for
24 the tenant, the rules shall require that, except as provided by this
25 section, an apartment house owner, manufactured home rental
26 community owner, multiple use facility owner, or condominium
27 manager may not impose on the tenant any extra charges, over and

1 above the cost per gallon and any other applicable taxes and
2 surcharges that are charged by the retail public utility to the
3 owner or manager, and that the rental unit or apartment house owner
4 or manager shall maintain adequate records regarding submetering
5 and make the records available for inspection by the tenant during
6 reasonable business hours. The rules shall allow an owner or
7 manager to charge a tenant a fee for late payment of a submetered
8 water bill if the amount of the fee does not exceed five percent of
9 the bill paid late. All submetering equipment is subject to the
10 rules and standards established by the utility commission for
11 accuracy, testing, and record keeping of meters installed by
12 utilities and to the meter-testing requirements of Section 13.140
13 [~~of this code~~].

14 (e) The utility commission may authorize a building owner to
15 use submetering equipment that relies on integrated radio based
16 meter reading systems and remote registration in a building
17 plumbing system using submeters that comply with nationally
18 recognized plumbing standards and are as accurate as utility water
19 meters in single application conditions.

20 SECTION 2.70. Section 13.5031, Water Code, is amended to
21 read as follows:

22 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any
23 other law, the utility commission shall adopt rules and standards
24 governing billing systems or methods used by manufactured home
25 rental community owners, apartment house owners, condominium
26 managers, or owners of other multiple use facilities for prorating
27 or allocating among tenants nonsubmetered master metered utility

1 service costs. In addition to other appropriate safeguards for the
2 tenant, those rules shall require that:

3 (1) the rental agreement contain a clear written
4 description of the method of calculation of the allocation of
5 nonsubmetered master metered utilities for the manufactured home
6 rental community, apartment house, or multiple use facility;

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

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

16 (4) the owner or condominium manager shall maintain
17 adequate records regarding the utility consumption of the
18 manufactured home rental community, apartment house, or multiple
19 use facility, the charges assessed by the retail public utility,
20 and the allocation of the utility costs to the tenants;

21 (5) the owner or condominium manager shall maintain
22 all necessary records concerning utility allocations, including
23 the retail public utility's bills, and shall make the records
24 available for inspection by the tenants during normal business
25 hours; and

26 (6) the owner or condominium manager may charge a
27 tenant a fee for late payment of an allocated water bill if the

1 amount of the fee does not exceed five percent of the bill paid
2 late.

3 SECTION 2.71. Section 13.505, Water Code, is amended to
4 read as follows:

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

20 SECTION 2.72. Section 13.512, Water Code, is amended to
21 read as follows:

22 Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION
23 CONTRACTS. Any eligible city is authorized to enter into
24 privatization contracts if such action is recommended by the board
25 of utility trustees and authorized by the governing body of the
26 eligible city pursuant to an ordinance. Any privatization contract
27 entered into prior to the effective date of this Act is validated,

1 ratified, and approved. Each eligible city shall file a copy of its
2 privatization contract with the utility commission, for
3 information purposes only, within 60 days of execution or the
4 effective date of this Act, whichever is later.

5 SECTION 2.73. Section 13.513, Water Code, is amended to
6 read as follows:

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

21 SECTION 2.74. Subsection (a), Section 5.013, Water Code, is
22 amended to read as follows:

23 (a) The commission has general jurisdiction over:

24 (1) water and water rights including the issuance of
25 water rights permits, water rights adjudication, cancellation of
26 water rights, and enforcement of water rights;

27 (2) continuing supervision over districts created

1 under Article III, Sections 52(b)(1) and (2), and Article XVI,
2 Section 59, of the Texas Constitution;

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

6 (4) the determination of the feasibility of certain
7 federal projects;

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

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

13 (7) the administration of the state's program relating
14 to inactive hazardous substance, pollutant, and contaminant
15 disposal facilities;

16 (8) the administration of a portion of the state's
17 injection well program;

18 (9) the administration of the state's programs
19 involving underground water and water wells and drilled and mined
20 shafts;

21 (10) the state's responsibilities relating to regional
22 waste disposal;

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

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

27 [~~13~~] any other areas assigned to the commission by

1 this code and other laws of this state.

2 SECTION 2.75. (a) On June 1, 2012, the following are
3 transferred from the Texas Commission on Environmental Quality to
4 the Public Utility Commission of Texas:

5 (1) the powers, duties, functions, programs, and
6 activities of the Texas Commission on Environmental Quality
7 relating to the economic regulation of water and sewer utilities,
8 including the issuance and transfer of certificates of convenience
9 and necessity, the determination of rates, and the administration
10 of hearings and proceedings involving those matters, under Chapter
11 13, Water Code, as provided by this article;

12 (2) any obligations and contracts of the Texas
13 Commission on Environmental Quality that are directly related to
14 implementing a power, duty, function, program, or activity
15 transferred under this article; and

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

21 (b) The Texas Commission on Environmental Quality and the
22 Public Utility Commission of Texas shall enter into a memorandum of
23 understanding that:

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

26 (2) establishes a plan for the identification and
27 transfer of the records, personnel, property, and unspent

1 appropriations of the Texas Commission on Environmental Quality
2 that are used for purposes of the commission's powers and duties
3 directly related to the regulation of water and sewer utilities
4 under Chapter 13, Water Code, as amended by this article; and

5 (3) establishes a plan for the transfer of all pending
6 applications, hearings, rulemaking proceedings, and orders
7 relating to the economic regulation of water and sewer utilities
8 under Chapter 13, Water Code, as amended by this article, from the
9 Texas Commission on Environmental Quality to the Public Utility
10 Commission of Texas.

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

14 (d) The executive directors of the Texas Commission on
15 Environmental Quality and the Public Utility Commission of Texas
16 may agree in the memorandum of understanding under this section to
17 transfer to the Public Utility Commission of Texas any personnel of
18 the Texas Commission on Environmental Quality whose functions
19 predominantly involve powers, duties, obligations, functions, and
20 activities related to the regulation of water and sewer utilities
21 under Chapter 13, Water Code, as amended by this article.

22 (e) The Texas Commission on Environmental Quality and the
23 Public Utility Commission of Texas shall appoint a transition team
24 to accomplish the purposes of this section. The transition team
25 shall establish guidelines on how the two agencies will cooperate
26 regarding:

27 (1) meeting federal drinking water standards;

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

8 (f) A rule, form, policy, procedure, or decision of the
9 Texas Commission on Environmental Quality related to a power, duty,
10 function, program, or activity transferred under this article
11 continues in effect as a rule, form, policy, procedure, or decision
12 of the Public Utility Commission of Texas and remains in effect
13 until amended or replaced by that agency.

14 (g) The memorandum required by this section must be
15 completed by April 1, 2012.

16 (h) The Public Utility Commission of Texas and the Texas
17 Commission on Environmental Quality shall adopt rules to implement
18 the changes in law made by this article to Chapter 13, Water Code,
19 not later than November 1, 2012.

20 SECTION 2.76. (a) The Public Utility Commission of Texas
21 shall conduct a comparative analysis of the ratemaking authority of
22 the commission before the effective date of this Act and the
23 ratemaking authority of the commission after the transition
24 described in Section 2.75 of this article, to identify potential
25 for procedural standardization. The Public Utility Commission of
26 Texas shall issue a report of the analysis, with recommendations
27 regarding rate standardization, for consideration by the 83rd

1 Legislature.

2 (b) The Public Utility Commission of Texas shall prepare a
3 report describing staffing changes related to the transition
4 described in Section 2.75 of this article, including reductions in
5 staff that the commission may realize as a result of consolidated
6 functions. The Public Utility Commission of Texas shall submit the
7 report to the Legislative Budget Board and the governor with the
8 legislative appropriations request for the 2014-2015 biennium.

9 SECTION 2.77. (a) On June 1, 2012, the following are
10 transferred from the office of public interest counsel of the Texas
11 Commission on Environmental Quality to the Office of Public Utility
12 Counsel:

13 (1) the powers, duties, functions, programs, and
14 activities of the office of public interest counsel of the Texas
15 Commission on Environmental Quality relating to the representation
16 of the public interest in matters related to the regulation of water
17 and sewer utilities under Chapter 13, Water Code, as amended by this
18 article;

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

23 (3) all property and records in the custody of the
24 office of public interest counsel of the Texas Commission on
25 Environmental Quality that are related to a power, duty, function,
26 program, or activity transferred under this article and all funds
27 appropriated by the legislature for that power, duty, function,

1 program, or activity.

2 (b) The office of public interest counsel of the Texas
3 Commission on Environmental Quality and the Office of Public
4 Utility Counsel shall enter into a memorandum of understanding
5 that:

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

8 (2) establishes a plan for the identification and
9 transfer of the records, personnel, property, and unspent
10 appropriations of the Texas Commission on Environmental Quality
11 that are used for purposes of the office of public interest
12 counsel's powers and duties directly related to the representation
13 of the public interest in matters relating to the regulation of
14 water and sewer utilities under Chapter 13, Water Code, as amended
15 by this article.

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

19 (d) The office of public interest counsel of the Texas
20 Commission on Environmental Quality and the Office of Public
21 Utility Counsel may agree in the memorandum of understanding under
22 this section to transfer to the Office of Public Utility Counsel any
23 personnel of the office of public interest counsel whose functions
24 predominantly involve powers, duties, obligations, functions, and
25 activities related to the representation of the public interest in
26 matters relating to the regulation of water and sewer utilities
27 under Chapter 13, Water Code, as amended by this article.

1 (e) The office of public interest counsel of the Texas
2 Commission on Environmental Quality and the Office of Public
3 Utility Counsel shall appoint a transition team to accomplish the
4 purposes of this section.

5 (f) A rule, form, policy, procedure, or decision of the
6 office of public interest counsel of the Texas Commission on
7 Environmental Quality related to a power, duty, function, program,
8 or activity transferred under this article continues in effect as a
9 rule, form, policy, procedure, or decision of the Office of Public
10 Utility Counsel and remains in effect until amended or replaced by
11 that agency.

12 (g) The memorandum required by this section must be
13 completed by April 1, 2012.

14 (h) The Office of Public Utility Counsel and the office of
15 public interest counsel of the Texas Commission on Environmental
16 Quality shall adopt rules to implement the changes in law made by
17 this article to Chapter 13, Water Code, not later than November 1,
18 2012.

19 ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY

20 COMMISSION OF TEXAS

21 SECTION 3.01. Section 11.002, Water Code, is amended by
22 adding Subdivision (21) to read as follows:

23 (21) "Utility commission" means the Public Utility
24 Commission of Texas.

25 SECTION 3.02. Section 11.041, Water Code, is amended to
26 read as follows:

27 Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person

1 entitled to receive or use water from any canal, ditch, flume,
2 lateral, dam, reservoir, or lake or from any conserved or stored
3 supply may present to the utility commission a written petition
4 showing:

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

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

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

12 (4) that the party owning or controlling the water
13 supply fails or refuses to supply the available water to the
14 petitioner, or that the price or rental demanded for the available
15 water is not reasonable and just or is discriminatory.

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

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

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

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

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

13 (g) If, after the preliminary investigation, the executive
14 director of the utility commission determines that no probable
15 grounds exist for the complaint, the executive director of the
16 utility commission shall dismiss the complaint. The utility
17 commission may either return the deposit or pay it into the State
18 Treasury.

19 SECTION 3.03. Section 12.013, Water Code, is amended to
20 read as follows:

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

25 (b) In this section, [~~The term~~] "political subdivision"
26 [~~when used in this section~~] means incorporated cities, towns or
27 villages, counties, river authorities, water districts, and other

1 special purpose districts.

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

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

15 (e) The utility commission may establish interim rates and
16 compel continuing service during the pendency of any rate
17 proceeding.

18 (f) The utility commission may order a refund or assess
19 additional charges from the date a petition for rate review is
20 received by the utility commission of the difference between the
21 rate actually charged and the rate fixed by the utility commission,
22 plus interest at the statutory rate.

23 [~~(g) No action or proceeding commenced prior to January 1,~~
24 ~~1977, before the Texas Water Rights Commission shall be affected by~~
25 ~~the enactment of this section.~~

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

1 ARTICLE 4. EFFECTIVE DATE

2 SECTION 4.01. This Act takes effect September 1, 2011.