

HOUSE JOURNAL

EIGHTY-THIRD LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTY-FIRST DAY — MONDAY, MAY 13, 2013

The house met at 2 p.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 804).

Present — Mr. Speaker; Allen; Alonzo; Alvarado; Anchia; Anderson; Ashby; Aycok; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Button; Callegari; Canales; Capriglione; Carter; Clardy; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Geren; Giddings; Goldman; Gonzales; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harper-Brown; Hernandez Luna; Herrero; Hilderbran; Howard; Huberty; Hughes; Hunter; Isaac; Johnson; Kacal; Keffer; King, K.; King, P.; King, S.; King, T.; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Otto; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Simpson; Smith; Smithee; Springer; Stephenson; Stickland; Strama; Taylor; Thompson, E.; Thompson, S.; Toth; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Vo; Walle; White; Workman; Wu; Zedler; Zerwas.

Absent, Excused — Harless; Kleinschmidt; Villarreal.

The speaker recognized Representative Branch who introduced Wade Hodges, senior minister, Preston Road Church of Christ, Dallas, who offered the invocation.

The speaker recognized Representative Krause who led the house in the pledges of allegiance to the United States and Texas flags.

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of important business in the district:

Harless on motion of Patrick.

The following members were granted leaves of absence for today because of important business in the district:

Kleinschmidt on motion of Perez.

Villarreal on motion of Howard.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Hunter requested permission for the Committee on Calendars to meet while the house is in session, at 2:30 p.m. today, in 3W.9, to set a calendar.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Calendars, 2:30 p.m. today, 3W.9, for a formal meeting, to set a calendar.

MESSAGES FROM THE SENATE

Messages from the senate were received at this time (see the addendum to the daily journal, Messages from the Senate, Message Nos. 1 and 2).

CAPITOL PHYSICIAN

The speaker recognized Representative Goldman who presented Dr. Richard Young of Fort Worth as the "Doctor for the Day."

The house welcomed Dr. Young and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

(Phillips in the chair)

FIVE-DAY POSTING RULE SUSPENDED

Representative Flynn moved to suspend the five-day posting rule to allow the Select Committee on Transparency in State Agency Operations to consider **SB 1368** at 1 p.m. or upon final adjournment tomorrow in JHR 140.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Select Committee on Transparency in State Agency Operations, 1 p.m. or upon final adjournment tomorrow, JHR 140, for a public hearing, to consider **SB 1368** and the previously posted agenda.

HR 1081 - PREVIOUSLY ADOPTED

(by Patrick, Burnam, Burkett, and Branch)

The chair laid out the following previously adopted resolution:

HR 1081, Congratulating James D. Spaniolo on his retirement as president of The University of Texas at Arlington.

On motion of Representative Zedler, the names of all the members of the house were added to **HR 1081** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Patrick who introduced James D. Spaniolo, president of The University of Texas at Arlington.

HCR 107 - PREVIOUSLY ADOPTED (by Eiland)

The chair laid out the following previously adopted resolution:

HCR 107, Congratulating George P. Mitchell on his receipt of a History-Making Texan Award from the Texas State History Museum Foundation.

On motion of Representatives Keffer and Ratliff, the names of all the members of the house were added to **HCR 107** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Eiland who introduced family members of George P. Mitchell and representatives of Mitchell Energy & Development Corporation. Sheridan Lorenz, daughter of George Mitchell, briefly addressed the house on behalf of her father as follows:

I am honored to accept this award on behalf of my father, George Mitchell. He regrets he cannot be here today but he asked me to deliver the following message:

"Thank you, Governor Perry, for this great honor and recognition of my contribution to energy development in Texas. Shale development, if done in a responsible manner, can produce cleaner and more secure energy resources and economic opportunity for generations to come. The foundation I established, The Cynthia and George Mitchell Foundation, is committed to clean energy, the environment, and sustainability in Texas. Through advances in clean energy development, including natural gas, renewable energy, and energy efficiency, Texas can be a global leader in the production of the cleanest energy at the lowest cost to consumers.

So I want to call on the leadership of Texas and the legislature to redouble its efforts to lead the transition to a clean energy economy. We should do this by modernizing existing oil and gas regulations to do a better job of managing advanced drilling technologies. We need to continue to expand renewable energy markets, and we should create greater incentives for energy efficiency.

I hope we can all work together to achieve these important goals."

I'd like to recognize Dan Steward. Dan is a geologist who was a vice president at Mitchell Energy and played an instrumental role during the many years of trial and error while the company developed the technology for shale gas extraction. Also, I want to introduce Marilu Hastings, Environment Program Director for the CGMF. She works with my father and our family to ensure his legacy of sustainability in Texas.

REMARKS ORDERED PRINTED

Representative Anchia moved to print remarks by Sheridan Lorenz, daughter of George Mitchell.

The motion prevailed.

FIVE-DAY POSTING RULE SUSPENDED

Representative Raymond moved to suspend the five-day posting rule to allow the Committee on Human Services to consider **SB 1150** at 10:30 a.m. or upon final adjournment tomorrow in E2.030.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Human Services, 10:30 a.m. or upon final adjournment tomorrow, E2.030, for a public hearing, to consider **SB 1150** and previously posted agenda items.

Agriculture and Livestock, upon final recess today, Desk 28, for a formal meeting, to consider pending business.

**PROVIDING FOR A LOCAL, CONSENT,
AND RESOLUTIONS CALENDAR**

Representative S. Thompson moved to suspend all necessary rules to set a local, consent, and resolutions calendar for 10 a.m. tomorrow.

The motion prevailed.

COMMITTEE GRANTED PERMISSION TO MEET

Representative S. Thompson requested permission for the Committee on Local and Consent Calendars to meet while the house is in session, at 2:45 p.m. today, in 3W.15, to set a calendar.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Local and Consent Calendars, 2:45 p.m. today, 3W.15, for a formal meeting, to set a calendar.

**HR 1720 - PREVIOUSLY ADOPTED
(by Anderson)**

The chair laid out and had read the following previously adopted resolution:

HR 1720, In memory of U.S. Army Captain Andrew Michael Pedersen-Keel.

On motion of Representatives Geren and R. Miller, the names of all the members of the house were added to **HR 1720** as signers thereof.

**HR 1824 - PREVIOUSLY ADOPTED
(by Menéndez)**

The chair laid out the following previously adopted resolution:

HR 1824, Honoring David Sinclair for his 40 years of service to the Texas Parks and Wildlife Department.

On motion of Representative Hilderbran, the names of all the members of the house were added to **HR 1824** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Menéndez who introduced David Sinclair and members of his family.

**HR 1825 - PREVIOUSLY ADOPTED
(by Menéndez)**

The chair laid out the following previously adopted resolution:

HR 1825, Congratulating Colonel Pete Flores on his retirement as Law Enforcement Division director of the Texas Parks and Wildlife Department.

On motion of Representative Hilderbran, the names of all the members of the house were added to **HR 1825** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Menéndez who introduced Colonel Pete Flores and members of his family.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence temporarily for today to attend a meeting of the Committee on Local and Consent Calendars:

- Anderson on motion of Flynn.
- Bohac on motion of Flynn.
- Burkett on motion of Flynn.
- Clardy on motion of Flynn.
- Collier on motion of Flynn.
- Farney on motion of Flynn.
- Gonzales on motion of Flynn.
- Larson on motion of Flynn.
- Martinez on motion of Flynn.
- Moody on motion of Flynn.
- Muñoz on motion of Flynn.
- Sheets on motion of Flynn.
- S. Thompson on motion of Flynn.

HR 1948 - ADOPTED
(by Walle)

Representative Walle moved to suspend all necessary rules to take up and consider at this time **HR 1948**.

The motion prevailed.

The following resolution was laid before the house:

HR 1948, Honoring Mendel Elementary School, Stehlik Intermediate School, Aldine Ninth Grade School, Aldine Senior High School, and MacArthur Senior High School in Aldine ISD on receiving the 2013 National Excellence in Urban Education Award.

HR 1948 was adopted.

(Anderson, Bohac, Burkett, Clardy, Collier, Farney, Gonzales, Larson, Martinez, Moody, Muñoz, Sheets, and S. Thompson now present)

On motion of Representative S. Thompson, the names of all the members of the house were added to **HR 1948** as signers thereof.

FIVE-DAY POSTING RULE SUSPENDED

Representative Kolkhorst moved to suspend the five-day posting rule to allow the Committee on Public Health to consider **SB 316** upon recess today in E2.010.

The motion prevailed.

Representative Martinez moved to suspend the five-day posting rule to allow the Committee on Transportation to consider **SB 1253** at 9 a.m. tomorrow in E2.012.

The motion prevailed.

Representative Lewis moved to suspend the five-day posting rule to allow the Committee on Judiciary and Civil Jurisprudence to consider **SB 392**, **SB 1348**, **SB 1419**, **SB 1891**, and the previously posted agenda at 2 p.m. or upon recess today in E2.012.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Public Health, upon recess today, E2.010, for a public hearing, to consider **SB 316** and the previously posted agenda.

Transportation, 9 a.m. tomorrow, E2.012, for a public hearing, to consider **SB 1253** and the previously posted agenda.

Judiciary and Civil Jurisprudence, 2 p.m. or upon recess today, E2.012, for a public hearing, to consider **SB 392**, **SB 1348**, **SB 1419**, **SB 1891**, and the previously posted agenda.

FIVE-DAY POSTING RULE SUSPENDED

Representative Cook moved to suspend the five-day posting rule to allow the Committee on State Affairs to consider **SB 327**, **SB 1576**, and the previously posted agenda at 10:30 a.m. or upon recess today in JHR 140.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

State Affairs, 10:30 a.m. or upon recess today, JHR 140, for a public hearing, to consider **SB 327**, **SB 1576**, and the previously posted agenda.

Human Services, upon recess today, Desk 12, for a formal meeting, to consider pending business.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

(Speaker in the chair)

**MAJOR STATE CALENDAR
SENATE BILLS
SECOND READING**

The following bills were laid before the house and read second time:

**CSSB 201 ON SECOND READING
(Price and Guillen - House Sponsors)**

CSSB 201, A bill to be entitled An Act relating to the continuation and functions of the State Preservation Board.

CSSB 201 was passed to third reading.

**GENERAL STATE CALENDAR
SENATE BILLS
SECOND READING**

The following bills were laid before the house and read second time:

**SB 15 ON SECOND READING
(Branch - House Sponsor)**

SB 15, A bill to be entitled An Act relating to the governance of public institutions of higher education in this state.

Amendment No. 1

Representative Branch offered the following amendment to **SB 15**:

Amend **SB 15** (house committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber the other SECTIONS of the bill accordingly:

SECTION _____. (a) Section 103.03, Education Code, is amended to read as follows:

Sec. 103.03. BOARD MEMBERS: APPOINTMENT, TERMS, OATH. Members of the board shall be appointed by the governor and confirmed by the senate. Members hold office for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year. Any vacancy that occurs on the board shall be filled for the unexpired term by appointment of the governor. Each member of the board shall take the constitutional oath of office.

(b) The change in law made by this section does not apply to a member of the board of regents of Midwestern State University who serves all or part of a full term of office if that full term begins before September 1, 2013. To implement the change in law made by this section to Section 103.03, Education Code, the terms of office of members of the board that begin in 2014 expire on February 1, 2019, the terms of office of members of the board that begin in 2016 expire on February 1, 2021, and the terms of office of members of the board that begin in 2018 expire on February 1, 2023.

SECTION _____. (a) Section 105.052, Education Code, is amended to read as follows:

Sec. 105.052. TERM OF OFFICE; REMOVAL; VACANCY. The term of office of each regent is six years, with the terms of three regents expiring on February 1 of each odd-numbered year ~~[every two years]~~. Members of the board may be removed from office for inefficiency or malfeasance of office. Any vacancy that occurs on the board shall be filled by the governor for the unexpired term.

(b) The change in law made by this section does not apply to a member of the board of regents of the University of North Texas System who serves all or part of a full term of office if that full term begins before September 1, 2013. To implement the change in law made by this section to Section 105.052, Education Code, the terms of office of members of the board that begin in 2015 expire on February 1, 2021, the terms of office of members of the board that begin in 2017 expire on February 1, 2023, and the terms of office of members of the board that begin in 2019 expire on February 1, 2025.

SECTION _____. (a) Section 111.12, Education Code, is amended to read as follows:

Sec. 111.12. APPOINTMENTS TO BOARD; TERMS. Members of the board are appointed by the governor with the advice and consent of the senate. The term of office of each regent shall be six years, with the terms of three regents expiring on February 1 of each odd-numbered year ~~[except that in making the first appointments the governor shall appoint three members for six years, three members for four years, and three members for two years]~~. Any vacancy that occurs on the board shall be filled for the unexpired term by appointment of the governor.

(b) The change in law made by this section does not apply to a member of the board of regents of the University of Houston System who serves all or part of a full term of office if that full term begins before August 26, 2013. To implement the change in law made by this section to Section 111.12, Education Code, the terms of office of members of the board that begin in August 2013

expire on February 1, 2019, the terms of office of members of the board that begin in August 2016 expire on February 1, 2021, and the terms of office of members of the board that begin in 2018 expire on February 1, 2023.

(2) On page 8, line 12, strike "September 1, 2013" and substitute "August 26, 2013".

Amendment No. 1 was adopted.

Amendment No. 2

Representative Branch offered the following amendment to **SB 15**:

Amend **SB 15** (house committee printing) as follows:

(1) On page 2, line 18, strike "employment, or personal or familial financial" and substitute "employment, personal financial, or familial financial".

(2) Strike page 3, lines 1-8, and substitute the following:

(a-4) A member of the governing board of an institution of higher education is prohibited from voting on a budgetary or personnel matter related to system administration or institutions of higher education until the member attends a training program that provides instruction in ethics, conflict-of-interest law, and the role of a governing board in a higher education institution or system and that is conducted by the Texas Higher Education Coordinating Board, or by the university system office if the member serves on the governing board of a university system. A governing board is responsible for maintaining records of each board member's attendance of a training program described by this subsection.

(3) Strike page 3, lines 14-22, and substitute the following:

(a-6) A member of the governing board of a university system who is appointed to the board when the legislature is not in session is prohibited from voting until the appointee has appeared before the Senate Committee on Nominations. If the Senate Committee on Nominations fails to hold a hearing before the 20th day after the date the chair of the committee is notified of the appointment by the governor's office, the appointee is not prohibited from voting if the appointee has otherwise met the requirements necessary to be eligible to vote.

Amendment No. 2 was adopted.

SB 15, as amended, was passed to third reading. (Anderson, Button, Phillips, Schaefer, Taylor, and Zedler recorded voting no.)

SB 346 ON SECOND READING (Geren - House Sponsor)

SB 346, A bill to be entitled An Act relating to reporting requirements of certain persons who do not meet the definition of political committee.

SB 346 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of **SB 346** under Article III, Section 30 of the Texas Constitution on the grounds that the bill, as amended in its passage through either house, changes its original purpose.

The point of order was withdrawn.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend a meeting of the Conference Committee on **SB 1**:

Otto on motion of Orr.

SB 346 - (consideration continued)

Representative Geren moved to postpone consideration of **SB 346** until 3:45 p.m. today.

The motion prevailed.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 25).

**SB 329 ON SECOND READING
(Zerwas - House Sponsor)**

SB 329, A bill to be entitled An Act relating to a prohibition on the use of a tanning facility by a minor.

Amendment No. 1

Representative Laubenberg offered the following amendment to **SB 329**:

Amend **SB 329** by striking all below the enacting clause and substituting the following:

SECTION 1. Subsection (f), Section 145.008, Health and Safety Code, is amended to read as follows:

(f) To ensure the proper operation of the tanning equipment, a tanning facility may not allow:

(1) a person younger than 16.5 years of age to use a tanning device;
and

(2) a person younger than 18 years of age to use a tanning device unless the person's parent or legal guardian, in person at the facility together with the person younger than 18 years of age and after confirming that they and the person have read and understood the advisory statement described in subsection (g) of this Section, consents in writing for the person to use the device, which may be revoked at any time.

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. This Act takes effect September 1, 2013.

Representative Zerwas moved to table Amendment No. 1.

The motion to table prevailed.

SB 329 was passed to third reading. (Anderson, Button, Carter, Flynn, Phillips, Schaefer, Toth, and Zedler recorded voting no.)

SB 566 ON SECOND READING
(Clardy - House Sponsor)

SB 566, A bill to be entitled An Act relating to the establishment of a pharmacy school at The University of Texas at Tyler.

SB 566 was passed to third reading. (Anderson, Button, Toth, and Zedler recorded voting no.)

SB 1611 ON SECOND READING
(S. Thompson, Lewis, Moody, Farney, and Y. Davis - House Sponsors)

SB 1611, A bill to be entitled An Act relating to discovery in a criminal case.

SB 1611 - REMARKS

REPRESENTATIVE S. THOMPSON: Mr. Speaker and members, **SB 1611** reforms the Texas criminal discovery statute in the Code of Criminal Procedure to ensure more open and transparent discovery in all criminal cases to improve the reliability of criminal convictions. The major reform includes how things are disclosed, what exactly has to be disclosed, places new protections for victims and witnesses by placing statutory restrictions on who the information gain under this statute can be shared with, requires the state to improve a written or electronic record of all items provided to the defense under the statute to avoid later disputes, and creates a requirement for continuing discovery after the trial has commenced.

SB 1611 was passed to third reading.

SB 825 ON SECOND READING
(S. Thompson - House Sponsor)

SB 825, A bill to be entitled An Act relating to disciplinary standards and procedures applicable to grievances alleging certain prosecutorial misconduct.

SB 825 - REMARKS

REPRESENTATIVE S. THOMPSON: Mr. Speaker, members, this is the Michael Morton Act. Mr. Morton is here with us in the gallery. Mr. Morton, would you mind standing?

This bill that arose from Michael Morton's case seeks to try and prevent such a miscarriage of justice in the future. The purpose of **SB 825** is to amend the state bar's disciplinary rules on violations of the prosecutor's disclosure rules—the Brady violations—establishing that they start the toll on the release from prison of a wrongfully convicted person. It changes the current statute of limitations which begins the toll at the time the violation is discovered, or should

have been discovered, with a full-year statute of limitations. It maintains the full-year statute of limitations and simply changes the toll time, beginning upon the release from prison of the wrongfully convicted individual. It provides an opportunity for the wrongfully convicted person to pursue their grievances after being released from prison and provides an enhanced fairness to the proceedings. Also, it mandates that if the grievance process results in sustained findings, that a mandatory public reprimand should be issued. This enhances open government, provides for public knowledge of the reprimand, and enhances public confidence in the process. While this bill does not, by itself, end wrongful conviction, it represents a large step in addressing the observed barriers to seeking and pursuing accountability and justice from the wrongfully convicted individual.

SB 825 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE WU: Under this bill, evidence that is not clearly Brady—that is questionable, whether it's Brady or not—does this bill intend to include that kind of evidence?

S. THOMPSON: No. The only evidence, that is clearly exculpatory evidence.

WU: Okay. In the section talking about statute of limitations, it refers to Section 501.101 of the Texas Government Code. That code, in reference to wrongfully convicted, speaks of people who are pardoned—who receive a general pardon. Does your bill include people who are generally pardoned or only people who are actually innocent?

S. THOMPSON: This bill only applies to people who are actually innocent.

WU: Okay. And a third question—if evidence was known to the police, but not known to the prosecution, does this bill apply to them?

S. THOMPSON: No, it does not. It must be known to the prosecutor, as it says in the bill.

WU: Okay. And lastly, if an office has an open-file policy, or if the state has adopted an open-file policy, as in **SB 1611**, what does this mean for the defense of a prosecutor under that section?

S. THOMPSON: The law is not meant to punish prosecutors for defense counsel failing to use due diligence to discover evidence under the new law or official policy that allows open files. The evidence must be hidden.

REMARKS ORDERED PRINTED

Representative Wu moved to print remarks between Representative S. Thompson and Representative Wu.

The motion prevailed.

SB 825 was passed to third reading.

(Harless now present)

COMMITTEE GRANTED PERMISSION TO MEET

Representative Harless requested permission for the Committee on Environmental Regulation to meet while the house is in session, at 4 p.m. today, in 3W.15, to consider **SB 791** and **SB 1727**.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Environmental Regulation, 4 p.m. today, 3W.15, for a formal meeting, to consider **SB 791** and **SB 1727**.

REMARKS ORDERED PRINTED

Representative Moody moved to print remarks by Representative S. Thompson on **SB 1611** and **SB 825**.

The motion prevailed.

FIVE-DAY POSTING RULE SUSPENDED

Representative Smith moved to suspend the five-day posting rule to allow the Committee on Licensing and Administrative Procedures to consider **SB 861** at 12 p.m. or upon final adjournment tomorrow in E1.010.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Licensing and Administrative Procedures, 12 p.m. or upon final adjournment tomorrow, E1.010, for a public hearing, to consider **SB 861** and the previously posted agenda.

**HB 535 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative Y. Davis called up with senate amendments for consideration at this time,

HB 535, A bill to be entitled An Act relating to the preference given by state agencies to goods offered by bidders in this state or manufactured, produced, or grown in this state or in the United States.

Representative Y. Davis moved to concur in the senate amendments to **HB 535**.

The motion to concur in the senate amendments to **HB 535** prevailed by (Record 805): 145 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson; Ashby; Aycock; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Button; Callegari; Canales; Capriglione; Carter; Clardy; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Fallon; Farias; Farney; Farrar; Fletcher; Flynn;

Frank; Frullo; Geren; Giddings; Goldman; Gonzales; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Hilderbran; Howard; Huberty; Hughes; Hunter; Isaac; Johnson; Kacal; Keffer; King, K.; King, P.; King, S.; King, T.; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Simpson; Smith; Smithee; Springer; Stickland; Strama; Taylor; Thompson, E.; Thompson, S.; Toth; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Vo; Walle; White; Workman; Wu; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — Stephenson.

STATEMENT OF VOTE

When Record No. 805 was taken, I was in the house but away from my desk. I would have voted yes.

Stephenson

Senate Committee Substitute

CSHB 535, A bill to be entitled An Act relating to the preference given by state agencies to goods offered by bidders in this state or manufactured, produced, or grown in this state or in the United States.

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

SECTION 1. Sections 2155.444(a), (b), and (c), Government Code, are amended to read as follows:

(a) The comptroller [~~commission~~] and all state agencies making purchases of goods, including agricultural products, shall promote the purchase of and give preference to goods manufactured, [~~those~~] produced, or grown in this state or offered by Texas bidders as follows:

(1) goods manufactured, produced, or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods manufactured or produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal; and

(2) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(b) If goods, including agricultural products, manufactured, produced, or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, manufactured, produced, or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c) In this section:

(1) "Agricultural products" includes textiles and other similar products.

(2) "Manufactured" means, with respect to a manufactured good, an item produced as a result of a manufacturing process that alters the form or function of components, including articles, materials, or supplies, that are directly incorporated into the item in a manner that adds value and transforms the components, and that is functionally distinct from a finished item produced merely from assembling the components into the item.

(3) [~~(1-a)~~] "Service-disabled veteran" means a person who is a veteran as defined by 38 U.S.C. Section 101(2) and who has a service-connected disability as defined by 38 U.S.C. Section 101(16).

(4) [~~(2)~~] "Texas bidder" means a business:

(A) incorporated in this state;

(B) that has its principal place of business in this state; or

(C) that has an established physical presence in this state.

SECTION 2. The change in law made by this Act applies only to a contract for goods that is entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

HB 2738 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Elkins called up with senate amendments for consideration at this time,

HB 2738, A bill to be entitled An Act relating to a study by the Department of Information Resources regarding state agency technology efficiency.

Representative Elkins moved to concur in the senate amendments to **HB 2738**.

The motion to concur in the senate amendments to **HB 2738** prevailed by (Record 806): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson; Ashby; Aycock; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Button; Callegari; Canales; Capriglione; Carter; Clardy; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Geren; Giddings; Goldman; Gonzales; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Hilderbran; Howard; Huberty; Hughes; Hunter; Isaac; Johnson;

Kacal; Keffer; King, K.; King, P.; King, S.; King, T.; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martínez; Martínez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Simpson; Smith; Smithee; Springer; Stickland; Strama; Taylor; Thompson, S.; Toth; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Vo; Walle; White; Workman; Wu; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — Stephenson; Thompson, E.

STATEMENT OF VOTE

When Record No. 806 was taken, I was in the house but away from my desk. I would have voted yes.

Stephenson

Senate Committee Substitute

CSHB 2738, A bill to be entitled An Act relating to a study by the Department of Information Resources regarding state agency technology efficiency.

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

SECTION 1. Chapter 2054, Government Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. LEGACY SYSTEMS STUDY

Sec. 2054.551. DEFINITION. In this subchapter, "legacy system" means a computer system or application program that is operated with obsolete or inefficient hardware or software technology.

Sec. 2054.552. STUDY. (a) The department shall conduct a study to identify legacy systems currently maintained by state agencies other than institutions of higher education. The study must include:

- (1) an inventory of the systems maintained by state agencies;
- (2) the annual cost and availability of resources to maintain the systems;
- (3) the security risks related to use of the systems;
- (4) if feasible, a cost estimate for updating the systems; and
- (5) a plan for assessing and prioritizing statewide modernization projects to update or replace the systems.

(b) The department may contract with a private vendor to conduct the study.

(c) On request by the department, each state agency shall provide to the department the information necessary for the study. The department may require a state agency to clarify or validate information provided by the agency or related to the study.

Sec. 2054.553. REPORT. Not later than October 1, 2014, the department shall submit a report on its findings from the study conducted under Section 2054.552 and recommendations for modernization of legacy systems to:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives;
- (4) the House Technology Committee; and
- (5) the Senate Committee on Government Organization.

Sec. 2054.554. EXPIRATION. This subchapter expires August 31, 2015.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

FIVE-DAY POSTING RULE SUSPENDED

Representative Branch moved to suspend the five-day posting rule to allow the Committee on Higher Education to consider **SB 414**, **SB 1525**, **SB 1741**, and the previously posted agenda at 8 a.m. Wednesday, May 15 in E1.014.

The motion prevailed.

(Geren in the chair)

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Higher Education, 8 a.m. Wednesday, May 15, E1.014, for a public hearing, to consider **SB 414**, **SB 1525**, **SB 1741**, and the previously posted agenda.

(Speaker in the chair)

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

SB 346 ON SECOND READING

(Geren - House Sponsor)

SB 346, A bill to be entitled An Act relating to reporting requirements of certain persons who do not meet the definition of political committee.

SB 346 was read second time earlier today and was postponed until this time.

SB 346 - POINT OF ORDER

Representative Stickland raised a point of order against further consideration of **SB 346** under Article III, Section 30 of the Texas Constitution on the grounds that the bill, as amended in its passage through either house, changes its original purpose.

The speaker overruled the point of order and submitted the following statement:

Representative Stickland raised a point of order against further consideration of **SB 346** on the ground that the bill violates Article III, Section 30 of the Texas Constitution, which prohibits a bill from being "amended in its passage through either house, as to change its original purpose." The point of order is respectfully overruled.

The chair notes, as Representative Stickland acknowledged, that **SB 346** has not changed since reaching the house. As a result, the point of order invites the chair to construe the intended purpose of a senate bill and determine whether the senate's amendments to its own bill impermissibly changed the bill's purpose prior to its arrival in the house. The chair believes that this function is best left to the senate's presiding officer, its members, and its parliamentarian.

Having reviewed house precedents, the chair has not identified an instance where it has sustained a point of order on a similar basis. See 76 H.J. Reg. 3230-31 (1999) (discussing the engrossed bill rule and overruling a point of order under Article III, Section 30 of the Texas Constitution, noting that any change in the bill's purpose, if it occurred, happened "in the senate between introduction and engrossment" such that "the house committee substitute did not change the purpose as evidenced by the senate engrossment"). In the spirit of comity, the chair would decline the invitation to review changes in purpose between introduced and engrossed senate bills so long as the senate extended to the house the same courtesy. On this basis alone, the point of order would be respectfully overruled. Moreover, even if the chair were to evaluate the changes between the introduced bill and the senate engrossment, the chair would find that, in this case, the purpose has not changed within the meaning of Article III, Section 30 of the Texas Constitution. See 83 H.J. Reg. 2828 (2013) (point of order by Representative Nevárez on **HB 1790**). Because both versions of the bill would have achieved the same purpose of requiring organizations engaged in political campaign activities to provide disclosures, the engrossment did not run afoul of Article III, Section 30.

REMARKS ORDERED PRINTED

Representative Alvarado moved to print all remarks on **SB 346**.

The motion prevailed. [Please refer to the supplement to today's journal for the text of the debate on **SB 346**.]

Amendment No. 1

Representative P. King offered the following amendment to **SB 346**:

Amend **SB 346** (house committee report) as follows:

- (1) Strike page 1, line 23, through page 2, line 1.
- (2) On page 2, line 2, strike "(c)" and substitute "(b)".
- (3) On page 2, between lines 26 and 27, insert the following:

(d) A labor organization or any subordinate entity or associated account of a labor organization is not required to include in a report filed under this chapter amounts received by the organization, entity, or account as normal dues paid by the labor organization's members.

Representative Geren moved to table Amendment No. 1.

The motion to table prevailed by (Record 807): 89 Yeas, 56 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Aycock; Branch; Burnam; Button; Callegari; Canales; Coleman; Collier; Cook; Cortez; Craddick; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Frullo; Geren; Giddings; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Hernandez Luna; Herrero; Howard; Huberty; Hunter; Johnson; Kacal; Keffer; King, K.; King, S.; King, T.; Kuempel; Larson; Longoria; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Moody; Muñoz; Naishtat; Nevárez; Oliveira; Paddie; Patrick; Perez; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sheffield, J.; Sheffield, R.; Smith; Strama; Thompson, S.; Turner, C.; Turner, S.; Vo; Walle; Workman; Wu; Zerwas.

Nays — Anderson; Ashby; Bell; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Capriglione; Carter; Clardy; Creighton; Dale; Elkins; Fallon; Farney; Fletcher; Flynn; Frank; Goldman; Gonzales; Harper-Brown; Hilderbran; Hughes; Isaac; King, P.; Klick; Kolkhorst; Krause; Laubenberg; Lavender; Leach; Lewis; Miller, R.; Morrison; Murphy; Orr; Parker; Perry; Phillips; Riddle; Sanford; Schaefer; Sheets; Simmons; Simpson; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Toth; Turner, E.S.; Villalba; White; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — Lozano.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 807. I intended to vote no.

Craddick

I was shown voting yes on Record No. 807. I intended to vote no.

Gooden

I was shown voting yes on Record No. 807. I intended to vote no.

Paddie

I was shown voting yes on Record No. 807. I intended to vote no.

R. Sheffield

Amendment No. 2

Representative Perry offered the following amendment to **SB 346**:

Amend **SB 346** (house committee printing) as follows:

- (1) On page 1, line 18, strike "(c)" and substitute "(b)".
- (2) Strike page 1, line 23, through page 2, line 1.
- (3) On page 2, line 2, strike "(c)" and substitute "(b)".

Representative Geren moved to table Amendment No. 2.

The motion to table prevailed by (Record 808): 89 Yeas, 52 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Ashby; Aycock; Bonnen, D.; Burnam; Button; Callegari; Canales; Clardy; Coleman; Collier; Cook; Cortez; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Frullo; Geren; Giddings; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Hernandez Luna; Herrero; Howard; Huberty; Hunter; Johnson; Kacal; Keffer; King, K.; King, S.; Kolkhorst; Kuempel; Larson; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Moody; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Patrick; Perez; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Rodriguez, E.; Rodriguez, J.; Rose; Sheffield, J.; Smith; Thompson, S.; Turner, C.; Turner, S.; Vo; Walle; Workman; Wu; Zerwas.

Nays — Anderson; Bell; Bohac; Bonnen, G.; Burkett; Capriglione; Carter; Craddick; Creighton; Dale; Elkins; Fallon; Farney; Flynn; Frank; Goldman; Gonzales; Harper-Brown; Hilderbran; Hughes; Isaac; King, P.; Klick; Krause; Laubenberg; Lavender; Leach; Lewis; Miller, R.; Morrison; Orr; Paddie; Parker; Perry; Phillips; Sanford; Schaefer; Sheets; Sheffield, R.; Simmons; Simpson; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Toth; Turner, E.S.; Villalba; White; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — Branch; Fletcher; King, T.; Ritter; Strama.

STATEMENTS OF VOTE

When Record No. 808 was taken, my vote failed to register. I would have voted no.

Branch

I was shown voting yes on Record No. 808. I intended to vote no.

Gooden

Amendment No. 3

Representative Perry offered the following amendment to **SB 346**:

Amend **SB 346** (house committee report) as follows:

- (1) On page 1, line 21, strike "\$25,000" and substitute "\$200,000".
- (2) On page 3, line 2, strike "\$1,000" and substitute "\$5,000".
- (3) On page 3, line 4, strike "\$25,000" and substitute "\$200,000".

Representative Geren moved to table Amendment No. 3.

The motion to table prevailed by (Record 809): 92 Yeas, 51 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Aycock; Branch; Burkett; Burnam; Button; Callegari; Canales; Coleman; Collier; Cook; Cortez; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farney; Frullo; Geren; Giddings; Gonzales; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Howard; Huberty; Hunter; Johnson; Kacal; Keffer; King, K.; King, S.; Kolkhorst; Kuempel; Larson; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Moody; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Patrick; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sheffield, J.; Sheffield, R.; Strama; Thompson, S.; Turner, C.; Turner, S.; Vo; Walle; Wu; Zerwas.

Nays — Anderson; Ashby; Bell; Bohac; Bonnen, D.; Bonnen, G.; Capriglione; Carter; Clardy; Craddick; Creighton; Elkins; Fallon; Fletcher; Flynn; Frank; Goldman; Hilderbran; Hughes; Isaac; King, P.; King, T.; Klick; Krause; Laubenberg; Lavender; Leach; Lewis; Miller, R.; Orr; Paddie; Parker; Perry; Phillips; Sanford; Schaefer; Sheets; Simmons; Simpson; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Toth; Turner, E.S.; Villalba; White; Workman; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — Morrison; Perez; Smith.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 809. I intended to vote no.

Gooden

I was shown voting yes on Record No. 809. I intended to vote no.

Kolkhorst

Amendment No. 4

Representative Perry offered the following amendment to **SB 346**:

Amend **SB 346** as follows:

(1) On page 1, line 23, between "does not apply to" and "a labor organization", insert the following:

⋮

(1) On page 2, line 1, between "organization" and the period, insert the following:

; or

(2) an agricultural or horticultural organization, or any subordinate entity or associated account of an agricultural or horticultural organization

Representative Geren moved to table Amendment No. 4.

The motion to table prevailed by (Record 810): 90 Yeas, 55 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Aycock; Bonnen, D.; Burnam; Button; Callegari; Canales; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farney; Farrar; Frullo; Geren; Giddings; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Howard; Huberty; Hunter; Johnson; Kacal; Keffer; King, K.; Kuempel; Larson; Longoria; Lozano; Lucio; Márquez; Martínez; Martínez Fischer; McClendon; Menéndez; Miles; Miller, D.; Moody; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Patrick; Perez; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sheffield, J.; Smith; Strama; Thompson, S.; Turner, C.; Turner, S.; Vo; Walle; Wu; Zerwas.

Nays — Anderson; Ashby; Bell; Bohac; Bonnen, G.; Branch; Burkett; Capriglione; Carter; Clardy; Dale; Elkins; Fallon; Fletcher; Flynn; Frank; Goldman; Gonzales; Hilderbran; Hughes; Isaac; King, P.; King, T.; Klick; Kolkhorst; Krause; Laubenberg; Lavender; Leach; Lewis; Miller, R.; Morrison; Paddie; Parker; Perry; Phillips; Riddle; Sanford; Schaefer; Sheets; Sheffield, R.; Simmons; Simpson; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Toth; Turner, E.S.; Villalba; White; Workman; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — King, S.

STATEMENT OF VOTE

I was shown voting yes on Record No. 810. I intended to vote no.

Gooden

Amendment No. 5

Representative Keffer offered the following amendment to **SB 346**:

Amend **SB 346** by striking SECTION 1 and inserting in lieu thereof the following:

SECTION 1. Section 254.261, Elections Code, is amended by adding subsections (e), (f), (g) and (h) to read as follows:

(e) Except as provided by other law, subsection (a) requires a non-profit corporation that is subject to Chapter 22, Business Organizations Code, to disclose each contribution received during the reporting period in the same manner as if the contribution was a political contribution made to a general-purpose committee that does not file monthly reports under Section 254.155.

(f) A non-profit corporation described by subsection (e) is required to itemize a contribution under Section 254.031(a)(1) only if the amount contributed by a person exceeds, in the aggregate, \$1000 during the reporting period.

(g) Subsection (e) does not apply if the direct campaign expenditures made by the non-profit corporation, combined with the direct campaign expenditures made by each other entity required to be shown to be related to the non-profit organization on the non-profit corporation's federal Internal Revenue Service Form 990, do not, in the aggregate, exceed \$25,000 in a calendar year.

(h) A contribution is not required to be disclosed under subsection (e) if the contribution is made with the express written agreement that the contribution will not be used, in whole or in part, to make a political contribution or a political expenditure. A contribution any part of which is actually used to make a political contribution or a political expenditure shall be disclosed as provided by subsection (e) notwithstanding that the contribution was made with an express written agreement that the contribution would not be used to make a political contribution or political expenditure.

Amendment No. 5 was withdrawn.

SB 346 was passed to third reading by (Record 811): 99 Yeas, 46 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Ashby; Aycocock; Bohac; Bonnen, D.; Branch; Burkett; Burnam; Button; Callegari; Canales; Clardy; Coleman; Collier; Cook; Cortez; Craddock; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farney; Farrar; Frullo; Geren; Giddings; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Howard; Huberty; Hunter; Johnson; Kacal; Keffer; King, K.; King, S.; King, T.; Kolkhorst; Kuempel; Larson; Lavender; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Moody; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Paddie; Patrick; Perez; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Rodriguez, E.; Rodriguez, J.; Rose; Sheffield, J.; Sheffield, R.; Smith; Strama; Thompson, S.; Turner, C.; Turner, S.; Vo; Walle; Wu; Zerwas.

Nays — Anderson; Bell; Bonnen, G.; Capriglione; Carter; Creighton; Dale; Elkins; Fallon; Fletcher; Flynn; Frank; Goldman; Gonzales; Hilderbran; Hughes; Isaac; King, P.; Klick; Krause; Laubenberg; Leach; Lewis; Miller, R.; Morrison; Parker; Perry; Phillips; Riddle; Sanford; Schaefer; Sheets; Simmons; Simpson; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Toth; Turner, E.S.; Villalba; White; Workman; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — Ritter.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 811. I intended to vote no.

Bohac

I was shown voting yes on Record No. 811. I intended to vote no.

Burkett

I was shown voting yes on Record No. 811. I intended to vote no.

Gooden

I was shown voting yes on Record No. 811. I intended to vote no.

Harper-Brown

I was shown voting yes on Record No. 811. I intended to vote no.

Lavender

REASON FOR VOTE

I voted against **SB 346** as I do not believe that we should subject certain groups to disclosure requirements while exempting other similar organizations.

Sheets

HB 1600 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Cook submitted the following conference committee report on **HB 1600**:

Austin, Texas, May 6, 2013

The Honorable David Dewhurst
President of the Senate

The Honorable Joe Straus
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1600** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nichols
Watson
Eltife
Whitmire
Carona

On the part of the senate

Cook
Ritter
Harless
Menéndez
Price

On the part of the house

HB 1600, A bill to be entitled An Act relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, to the rates for water service, and to the functions of the Office of Public Utility Counsel; authorizing a fee.

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

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

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

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

SECTION 1.02. Section 12.053, Utilities Code, is amended to read as follows:

Sec. 12.053. MEMBERSHIP QUALIFICATIONS. (a) To be eligible for appointment, a commissioner must ~~[be]~~:

- (1) ~~be~~ a qualified voter;
- (2) ~~be~~ a citizen of the United States; ~~[and]~~
- (3) ~~be~~ a competent and experienced administrator;
- (4) be well informed and qualified in the field of public utilities and utility regulation; and
- (5) have at least five years of experience in the administration of business or government or as a practicing attorney or certified public accountant ~~[a representative of the general public]~~.

(b) A person is not eligible for appointment as a commissioner if the person:

- (1) at any time during the two years preceding appointment:
 - (A) personally served as an officer, director, owner, employee, partner, or legal representative of a public utility regulated by the commission or of an~~[]~~ affiliate~~[]~~ or direct competitor of a public utility regulated by the commission; or
 - (B) owned or controlled, directly or indirectly, more than a 10 percent interest ~~[stocks or bonds of any class with a value of \$10,000 or more]~~ in a public utility regulated by the commission or in an~~[]~~ affiliate~~[]~~ or direct competitor of a public utility regulated by the commission; or
- (2) is not qualified to serve under Section 12.151, 12.152, or 12.153.

SECTION 1.03. Section 12.152(a), Utilities Code, is amended to read as follows:

(a) A person is not eligible for appointment as a commissioner or executive director of the commission if:

- (1) the person serves on the board of directors of a company that supplies fuel, utility-related services, or utility-related products to regulated or unregulated electric or telecommunications utilities; or
- (2) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the commission;

(B) directly or indirectly owns or controls more than a 10 percent interest [~~or a pecuniary interest with a value exceeding \$10,000~~] in:

(i) a business entity or other organization that is regulated by or receives funds from the commission; or

(ii) a utility competitor, utility supplier, or other entity affected by a commission decision in a manner other than by the setting of rates for that class of customer;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(D) notwithstanding Paragraph (B), has an interest in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings at the time of appointment is in a single utility, utility competitor, or utility supplier in this state and the person does not disclose this information to the governor, senate, commission, or other entity, as appropriate.

SECTION 1.04. Section 12.154(a), Utilities Code, is amended to read as follows:

(a) During the period of service with the commission, a commissioner or commission employee may not:

(1) have a pecuniary interest, including an interest as an officer, director, partner, owner, employee, attorney, or consultant, in:

(A) a public utility or affiliate; or

(B) a person a significant portion of whose business consists of furnishing goods or services to public utilities or affiliates; or

(2) [~~directly or indirectly own or control securities in a public utility, affiliate, or direct competitor of a public utility; or~~

~~(3)~~ accept a gift, gratuity, or entertainment from:

(A) a public utility, affiliate, or direct competitor of a public utility;

(B) a person a significant portion of whose business consists of furnishing goods or services to public utilities, affiliates, or direct competitors of public utilities; or

(C) an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Paragraph (A) or (B).

SECTION 1.05. Section 12.155, Utilities Code, is amended by adding Subsection (d) to read as follows:

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

SECTION 1.06. Chapter 15, Utilities Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CEASE AND DESIST ORDERS

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

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

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

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

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

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

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

(B) is hazardous;

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

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

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

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

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

(1) contains a statement of the charges; and

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

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

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

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

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

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

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

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

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

SECTION 1.07. Section 39.107, Utilities Code, is amended by adding Subsection (k) to read as follows:

(k) The commission by rule shall prohibit an electric utility or transmission and distribution utility from selling, sharing, or disclosing information generated, provided, or otherwise collected from an advanced metering system or meter information network, including information used to calculate charges for service, historical load data, and any other customer information. The commission shall allow an electric utility or transmission and distribution utility to share information with an affiliated corporation, or other third-party entity, if the information is to be used only for the purpose of providing electric utility service to the customer or other customer-approved services.

SECTION 1.08. Section 39.151, Utilities Code, is amended by amending Subsections (d-1) and (e) and adding Subsections (d-2), (d-3), (d-4), and (e-1) to read as follows:

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

(d-2) Except as otherwise agreed to by the commission and an independent organization certified by the commission under this section, the organization must submit to the commission for review and approval proposals for obtaining debt financing or for refinancing existing debt. The commission may approve, disapprove, or modify a proposal.

(d-3) An independent organization certified by the commission under this section shall develop proposed performance measures to track the organization's operations. The independent organization must submit the proposed performance measures to the commission for review and approval. The commission shall review the organization's performance as part of the budget review process under Subsection (d-1). The commission shall prepare a report at the time the commission approves the organization's budget detailing the organization's

performance and submit the report to the lieutenant governor, the speaker of the house of representatives, and each house and senate standing committee that has jurisdiction over electric utility issues.

(d-4) The commission may:

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

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

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

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

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

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

(e) After approving the budget of an independent organization under Subsection (d-1), the [The] commission shall [may] authorize the [an independent] organization [that is certified under this section] to charge [a reasonable and competitively neutral rate] to wholesale buyers and sellers a system administration fee, within a range determined by the commission, that is reasonable and competitively neutral to fund [to cover] the independent organization's approved budget [costs]. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate [the organization's budget and] the reasonableness and neutrality of the fee [a rate or proposed rate] or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate the fee. The commission shall require the organization to closely match actual revenues generated by the fee and other sources of revenue with revenue necessary to fund the budget, taking into account the effect of a fee change on market participants and consumers, to ensure that the budget year does not end with surplus or insufficient funds. The commission shall require the organization to submit to the commission, on a schedule determined by the commission, reports that compare actual expenditures with budgeted expenditures [a rate or a rate request].

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

SECTION 1.09. Section 39.1515(c), Utilities Code, is amended to read as follows:

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

SECTION 1.10. Section 39.903(d), Utilities Code, is amended to read as follows:

(d) The commission shall annually review and approve system benefit fund accounts, projected revenue requirements, and proposed nonbypassable fees. ~~[The commission shall report to the electric utility restructuring legislative oversight committee if the system benefit fund fee is insufficient to fund the purposes set forth in Subsection (e) to the extent required by this section.]~~

SECTION 1.11. Subchapter C, Chapter 52, Utilities Code, is amended by adding Section 52.1035 to read as follows:

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

(1) the certificate holder's name;

(2) the certificate holder's address; and

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

(b) The rules must:

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

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

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

SECTION 1.12. Section 64.003, Utilities Code, is repealed.

SECTION 1.13. The Public Utility Commission of Texas shall adopt rules necessary to implement Section 39.107(k), Utilities Code, as added by this article, as soon as practicable after the effective date of this Act.

SECTION 1.14. The Public Utility Commission of Texas shall adopt rules to implement the filing process required by Section 52.1035, Utilities Code, as added by this article, as soon as practicable. The rules must specify whether the commission will require that a holder of a certificate of operating authority or holder of a service provider certificate of operating authority file the information required by Section 52.1035, Utilities Code, as added by this article, once or on a

regular basis. Regardless of the frequency of filing required, each certificate holder shall file the information required by Section 52.1035, Utilities Code, as added by this article, not later than January 1, 2015. If the commission requires regular filings, the rules must specify the timing of the subsequent filings.

ARTICLE 2. WATER AND SEWER UTILITIES AND OTHER RELATED DUTIES OF THE PUBLIC UTILITY COMMISSION OF TEXAS; RATES FOR WATER SERVICE

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

(a) The commission has general jurisdiction over:

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

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

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

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

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

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

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

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

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

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

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

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

~~(13)~~ any other areas assigned to the commission by this code and other laws of this state.

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

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

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

Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. The commission or the Public Utility Commission of Texas may issue an emergency order appointing a willing person

to temporarily manage and operate a utility under Section 13.4132. Notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

SECTION 2.04. Sections 5.508(a) and (c), Water Code, are amended to read as follows:

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

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

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

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

SECTION 2.06. Section 11.041(f), Water Code, is amended to read as follows:

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The utility commission may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. On completion of the hearing, the commission shall render a written decision.

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

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

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

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed; provided, however, the utility

commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

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

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

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

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

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

SECTION 2.08. Section 13.002, Water Code, is amended by amending Subdivisions (2), (18), and (22) and adding Subdivisions (4-a), (4-b), (4-c), and (22-a) to read as follows:

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

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

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

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

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

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

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

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in conjunction with one or more persons or

corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(4-a) "Class A utility" means a public utility that provides retail water or sewer utility service through 10,000 or more taps or connections.

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

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

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

(22) "Test year" means the most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which [representative] operating data for a retail public utility are available. ~~[A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.]~~

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

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

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

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

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

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

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

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

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The utility commission and the utility

commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the utility commission under this subchapter. The duties of the utility commission, the executive director, and the staff of the utility commission or commission, as appropriate, include:

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

(2) preparation and presentation of evidence before the utility commission or commission, as appropriate, ~~commission~~ or its appointed examiner in proceedings;

(3) conducting investigations of water and sewer utilities under the jurisdiction of the utility commission or commission, as appropriate ~~commission~~;

(4) preparation of recommendations that the utility commission or commission, as appropriate, ~~commission~~ undertake an investigation of any matter within its jurisdiction;

(5) preparation of recommendations and a report for inclusion in the annual report of the utility commission or commission, as appropriate ~~commission~~;

(6) protection and representation of the public interest~~, together with the public interest advocate,~~ before the utility commission or commission, as appropriate ~~commission~~; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) may conduct consumer outreach and education programs for residential and small commercial consumers.

(c) This section does not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The utility commission by rule shall establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail

water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed

by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

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

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

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

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

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

(2) establish forms for all reports;

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

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

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

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

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

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

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

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

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

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

SECTION 2.26. Section 13.136, Water Code, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) The utility commission by rule shall require each [~~Each~~] utility to annually [~~shall~~] file a service, and financial, and normalized earnings report in a form and at times specified by utility commission rule. The report must include information sufficient to enable the utility commission to properly monitor utilities in this state. The utility commission shall make available to the public information in the report the utility does not file as confidential.

(b-1) The utility commission shall provide copies of a report described by Subsection (b) that include information filed as confidential to the Office of Public Utility Counsel on request, at no cost to the office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) the affected utility's mailing address.

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

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

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

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

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT.

A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

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

(a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing

and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

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

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

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

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

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

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

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

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

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

commission rule in accordance with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 2.38. Sections 13.185(d) and (h), Water Code, are amended to read as follows:

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

(1) base a utility's expenses on historic test year information adjusted for known and measurable changes, as determined by utility commission rules; and

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

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

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

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

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

SECTION 2.39. Section 13.187, Water Code, is amended to read as follows:

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

(a-1) A utility may not make changes in its rates except by sending by mail or e-mail [delivering] a statement of intent to each ratepayer and to [with] the regulatory authority having original jurisdiction at least 35 [60] days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

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

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

(A) 10,000 gallons of water; and

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

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

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

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

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

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

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

(e) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 150 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress [If, before the 91st day after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction, the regulatory authority shall set the matter for hearing].

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

(f) The regulatory authority shall, not later than the 30th day after the effective date of the change, begin a hearing to determine the propriety of the change [may set the matter for hearing on its own motion at any time within 120

~~days after the effective date of the rate change]. If the regulatory authority is the utility commission, the utility commission may refer the matter to the State Office of Administrative Hearings as provided by utility commission rules [If more than half of the ratepayers of the utility receive service in a county with a population of more than 3.3 million, the hearing must be held at a location in that county].~~

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

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

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

(i) A utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the utility commission is exercising appellate or original jurisdiction, by filing a bond with the utility commission if the suspension period has been extended under Subsection (e-1) and the utility commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(j) The bonded rate may not exceed the proposed rate. The bond must be payable to the utility commission in an amount, in a form, and with a surety approved by the utility commission and conditioned on refund [The regulatory authority, pending final action in a rate proceeding, may order the utility to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the regulatory authority].

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

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

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

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

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

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

~~[(2) 150 days by the commission.]~~

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

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

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

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

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

SECTION 2.40. Subchapter F, Chapter 13, Water Code, is amended by adding Sections 13.1871 and 13.1872 to read as follows:

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

(b) A utility may not make changes in its rates except by sending by mail or e-mail a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;
(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 10,000 gallons of water; and

(B) 30,000 gallons of water;

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

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

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

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

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

(f) After written notice to the utility, a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(g) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 205 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

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

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

(j) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (i), the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (h), the proposed rate may not be suspended for longer than:

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

(2) 205 days by the utility commission.

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

(l) The hearing may be informal.

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

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

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

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

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

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

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

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

(s) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (f) or Subsections (g) and (h) or until a final

determination is made on the proposed rate. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (d) was filed continue in effect during the suspension period.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) five percent; or

(B) the percentage increase in the price index between the year preceding the year in which the utility requests the adjustment and the year in which the utility requests the adjustment.

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

SECTION 2.41. Section 13.188, Water Code, is amended to read as follows:

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

(b) Notwithstanding any other provision to the contrary, this adjustment is an uncontested matter not subject to a contested case hearing. However, the utility commission [~~executive director~~] shall hold an uncontested public meeting:

(1) on the request of a member of the legislature who represents the area served by the water and sewer utility; or

(2) if the utility commission [~~executive director~~] determines that there is substantial public interest in the matter.

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

SECTION 2.42. Sections 13.241(a), (d), and (e), Water Code, are amended to read as follows:

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

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

(e) The utility commission by rule shall develop a standardized method for determining under Section 13.246(f) which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area is more capable

financially, managerially, and technically of providing continuous and adequate service. In this subsection, "economically distressed area" has the meaning assigned by Section 15.001.

SECTION 2.43. Sections 13.242(a) and (c), Water Code, are amended to read as follows:

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

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

SECTION 2.44. Section 13.244, Water Code, is amended to read as follows:

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

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

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

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

- (1) a description of the proposed service area by:
 - (A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;
 - (B) the Texas State Plane Coordinate System;

- (C) verifiable landmarks, including a road, creek, or railroad line;
- or
- (D) if a recorded plat of the area exists, lot and block number;
- (2) a description of any requests for service in the proposed service area;
- (3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;
- (4) a description of the sources of funding for all facilities;
- (5) to the extent known, a description of current and projected land uses, including densities;
- (6) a current financial statement of the applicant;
- (7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:
- (A) at least 50 acres; and
- (B) wholly or partially located within the proposed service area;
- and
- (8) any other item required by the utility commission.

SECTION 2.45. Sections 13.245(b), (c), (c-1), (c-2), (c-3), and (e), Water Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.46. Sections 13.2451(b) and (c), Water Code, are amended to read as follows:

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

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

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

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

SECTION 2.47. Section 13.246, Water Code, is amended to read as follows:

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

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

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

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

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

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;

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

(7) environmental integrity;

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

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

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

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

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

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

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

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

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the utility commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the utility commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or utility commission or commission rules by the water or sewer system of another person.

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

SECTION 2.48. Section 13.247(a), Water Code, is amended to read as follows:

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

SECTION 2.49. Section 13.248, Water Code, is amended to read as follows:

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

SECTION 2.50. Sections 13.250(b), (c), and (e), Water Code, are amended to read as follows:

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

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

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

(3) nonuse; or

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

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

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

SECTION 2.51. Section 13.2502(d), Water Code, is amended to read as follows:

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

SECTION 2.52. Section 13.251, Water Code, is amended to read as follows:

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

SECTION 2.53. Section 13.252, Water Code, is amended to read as follows:

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

SECTION 2.54. Section 13.253, Water Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

SECTION 2.55. Sections 13.254(a), (a-1), (a-2), (a-3), (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Water Code, are amended to read as follows:

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

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

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the

currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

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

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

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

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

(A) the area for which service is sought;

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

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

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

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

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

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

(3) the certificate holder:

(A) has refused to provide the service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification;

the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

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

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

SECTION 2.56. Sections 13.255(a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Water Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the

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

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

SECTION 2.57. Section 13.2551, Water Code, is amended to read as follows:

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

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

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

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

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

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

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

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

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

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

SECTION 2.58. Sections 13.257(e), (i), (r), and (s), Water Code, are amended to read as follows:

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

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

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

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

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

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

(r) A utility service provider shall:

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

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

(B) the Texas State Plane Coordinate System;

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

or

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

(2) submit to the utility commission [~~executive director~~] evidence of the recording.

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

SECTION 2.59. Sections 13.301(a), (b), (c), (d), (e), (f), and (g), Water Code, are amended to read as follows:

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

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

(2) unless public notice is waived by the utility commission [~~executive director~~] for good cause shown, give public notice of the action.

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

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

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

(e) Before the expiration of the 120-day notification period, the utility commission [~~executive director~~] shall notify all known parties to the transaction and the Office of Public Utility Counsel whether [of] the utility commission will

~~[executive director's decision whether to request that the commission]~~ hold a public hearing to determine if the transaction will serve the public interest. The utility commission may hold ~~[executive director may request]~~ a hearing if:

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.60. Section 13.302, Water Code, is amended to read as follows:

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

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

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

(d) The utility commission [~~executive director~~] may [~~request that the commission~~] hold a public hearing on the transaction if the utility commission [~~executive director~~] believes that a criterion prescribed by Section 13.301(e) applies.

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

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

(2) at any time after the utility commission [~~executive director~~] notifies the person or utility that a hearing will not be held [~~requested~~].

(f) If the utility commission decides to hold a hearing [~~is requested~~] or if the person or utility fails to make the application to the utility commission as required, the purchase or acquisition may not be completed unless the utility commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

SECTION 2.61. Section 13.303, Water Code, is amended to read as follows:

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

SECTION 2.62. Section 13.304, Water Code, is amended to read as follows:

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

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

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

SECTION 2.63. Section 13.341, Water Code, is amended to read as follows:

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

SECTION 2.64. Section 13.342, Water Code, is amended to read as follows:

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

SECTION 2.65. Section 13.343(a), Water Code, is amended to read as follows:

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

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

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

SECTION 2.66. Section 13.381, Water Code, is amended to read as follows:

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

SECTION 2.67. Section 13.382(a), Water Code, is amended to read as follows:

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

SECTION 2.68. Section 13.411, Water Code, is amended to read as follows:

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

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

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

commission.

SECTION 2.69. Section 13.4115, Water Code, is amended to read as follows:

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

SECTION 2.70. Sections 13.412(a), (f), and (g), Water Code, are amended to read as follows:

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

- (1) has abandoned operation of its facilities;
- (2) informs the utility commission or the commission that the owner is abandoning the system;
- (3) violates a final order of the utility commission or the commission;

or

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

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

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

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

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

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

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

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

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

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

SECTION 2.71. Section 13.413, Water Code, is amended to read as follows:

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

(1) payment of fees to the receiver for his services;

(2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and

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

SECTION 2.72. Section 13.4131, Water Code, is amended to read as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement,

gross or continuing noncompliance with this chapter or a rule adopted under this chapter [~~commission rules~~], or noncompliance with an order issued under this chapter [~~commission orders~~].

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

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

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

SECTION 2.73. Sections 13.4132(a), (b), and (d), Water Code, are amended to read as follows:

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

- (1) has discontinued or abandoned operations or the provision of services; or
- (2) has been or is being referred to the attorney general for the appointment of a receiver under Section 13.412.

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

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

SECTION 2.74. Sections 13.4133(a) and (c), Water Code, are amended to read as follows:

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

(c) The utility commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The utility commission shall require the utility to provide notice of the hearing to

each customer. The additional revenues collected under an emergency rate increase are subject to refund if the utility commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 2.75. Sections 13.414(a) and (c), Water Code, are amended to read as follows:

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

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

SECTION 2.76. Sections 13.4151(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as follows:

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

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

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

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

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

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

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

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

(3) any other matters that justice requires.

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

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

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

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

(f) If the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c) [by the executive director] or fails to timely respond to the notice, the utility commission or the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the [executive director's] report. If the utility commission or the commission assesses the penalty recommended by the report, the utility commission or the commission shall give written notice to the person, affiliated interest, or retail public utility charged of its decision.

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

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

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

(1) pay the penalty in full; or

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

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

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

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

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

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

SECTION 2.77. Section 13.417, Water Code, is amended to read as follows:

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

SECTION 2.78. Section 13.418, Water Code, is amended to read as follows:

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

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

SECTION 2.79. Section 13.501(7), Water Code, is amended to read as follows:

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

SECTION 2.80. Section 13.502(e), Water Code, is amended to read as follows:

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

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

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

SECTION 2.81. Sections 13.503(a), (b), and (e), Water Code, are amended to read as follows:

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

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 [~~of this code~~].

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

SECTION 2.82. Section 13.5031, Water Code, is amended to read as follows:

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

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

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

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

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

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

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

SECTION 2.83. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K [~~of this chapter~~], if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or

condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

SECTION 2.84. Section 13.512, Water Code, is amended to read as follows:

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

SECTION 2.85. Section 13.513, Water Code, is amended to read as follows:

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

SECTION 2.86. Section 49.352(c), Water Code, is amended to read as follows:

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

SECTION 2.87. Section 552.047(e), Local Government Code, is amended to read as follows:

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

SECTION 2.88. Section 7201.004(b), Special District Local Laws Code, is amended to read as follows:

(b) This section does not apply to:

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

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

SECTION 2.89. Section 7201.005(c), Special District Local Laws Code, is amended to read as follows:

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

SECTION 2.90. Section 7201.102, Special District Local Laws Code, is amended to read as follows:

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

SECTION 2.91. Section 8363.106(b), Special District Local Laws Code, is amended to read as follows:

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

SECTION 2.92. Section 8363.251(a), Special District Local Laws Code, is amended to read as follows:

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

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

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

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

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

SECTION 2.93. Section 8801.201, Special District Local Laws Code, is amended to read as follows:

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

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

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

SECTION 2.94. Section 8803.151(1), Special District Local Laws Code, is amended to read as follows:

(1) "Commission" means the Public Utility Commission of Texas [~~Commission on Environmental Quality~~].

SECTION 2.95. Section 8808.151(1), Special District Local Laws Code, is amended to read as follows:

(1) "Commission" means the Public Utility Commission of Texas [~~Commission on Environmental Quality~~].

SECTION 2.96. (a) On September 1, 2014, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer service, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Section 12.013 and Chapter 13, Water Code, as provided by this Act;

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

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

(b) The Texas Commission on Environmental Quality shall continue to carry out the commission's duties related to the economic regulation of water and sewer service under the law as it existed immediately before the effective date of this Act until September 1, 2014, and the former law is continued in effect for that purpose.

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

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

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

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer service under Section 12.013 and Chapter 13, Water Code, as amended by this Act, from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas.

(d) The memorandum of understanding under this section:

(1) is not required to be adopted by rule under Section 5.104, Water Code; and

(2) must be completed by August 1, 2014.

(e) The executive directors of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas may agree in the memorandum of understanding under this section to transfer to the Public Utility Commission of Texas any personnel of the Texas Commission on Environmental Quality whose functions predominantly involve powers, duties, obligations, functions, and activities related to the economic regulation of water and sewer service under Section 12.013 and Chapter 13, Water Code, as amended by this Act.

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

(g) On or after September 1, 2013, the Office of Public Utility Counsel may initiate or intervene in a contested case before the Texas Commission on Environmental Quality that the office would be entitled to initiate or intervene in if the case were before the Public Utility Commission of Texas, as authorized by Chapter 13, Water Code, as amended by this Act.

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

(1) meeting federal drinking water standards;

(2) maintaining adequate supplies of water;

(3) meeting established design criteria for wastewater treatment plants;

(4) demonstrating the economic feasibility of regionalization; and

(5) serving the needs of economically distressed areas.

(i) The transition team appointed under Subsection (h) of this section shall provide monthly updates to the executive directors of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas on the implementation of this Act and provide a final report on the implementation to the executive directors not later than September 1, 2014.

(j) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this Act continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas and remains in effect until amended or replaced by that agency. Notwithstanding any other law, beginning September 1, 2013, the Public Utility Commission of Texas may propose rules, forms, policies, and procedures related to a function to be transferred to the Public Utility Commission of Texas under this Act.

(k) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this Act to Section 12.013 and Chapter 13, Water Code, not later than September 1, 2015.

(l) An affiliate of a Class A utility, as those terms are defined by Section 13.002, Water Code, as amended by this Act, may not file an application for a rate change on or after the effective date of this Act unless the affiliated Class A utility has filed for a rate change on or after that date. In relation to the application filed by the affiliate of the Class A utility, the Public Utility Commission of Texas:

(1) may not approve the rate change application until the Public Utility Commission of Texas approves the rate change application filed by the affiliated Class A utility; and

(2) may require the affiliate to comply with the Class A utility rate change process prescribed by Section 13.187, Water Code, regardless of whether the affiliate is classified as a Class A, B, or C utility under Section 13.002, Water Code, as amended by this Act.

SECTION 2.97. (a) The Public Utility Commission of Texas shall conduct a comparative analysis of the ratemaking authority of the commission before the effective date of this Act and the ratemaking authority of the commission after the transition described in Section 2.96 of this article, to identify potential for procedural standardization. The Public Utility Commission of Texas shall issue a report of the analysis, with recommendations regarding rate standardization, for consideration by the 84th Legislature.

(b) The Public Utility Commission of Texas shall prepare a report describing staffing changes related to the transition described in Section 2.96 of this article, including reductions in staff that the commission may realize as a result of consolidated functions. The Public Utility Commission of Texas shall submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2016-2017 biennium.

SECTION 2.98. The Office of Public Utility Counsel shall prepare a report describing staffing changes related to the changes in law made to the duties of the office in this article, including reductions in staff that the office may realize as a

result of consolidated functions. The Office of Public Utility Counsel shall submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2016-2017 biennium.

ARTICLE 3. EFFECTIVE DATE

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

HB 1600 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE S. TURNER: Chairman Cook, as you may recall, I had an amendment to this bill, which was adopted on the house floor by this body, that would have required the Public Utility Commission to do a cost-benefit analysis under certain circumstances. And, I understand that Senator Fraser had a similar amendment on the senate floor that he discussed and ultimately pulled down before the bill went to conference because, as he noted on the senate floor, my amendment was already in the bill for discussion purposes in the conference committee. Chairman Cook, I understand that my amendment is not in the conference committee report that is before us today. Is that correct?

REPRESENTATIVE COOK: Yes.

S. TURNER: And, Chairman Cook, do you understand that the reason Senator Fraser and I offered those amendments is that there are a number of members of this body in both the house and senate, republicans and democrats, as well as a number of interest groups on both the right and the left, that are deeply concerned that the Public Utility Commission may consider authorizing a fundamental change in the Texas electric market that could potentially add over \$1 billion annually to our constituents' electric bills?

COOK: Yes.

S. TURNER: And, are you aware that this fundamental change in market design that we are concerned about is commonly referred to as a "capacity market," where companies get paid just for having energy available for the market even if it is not in demand or used?

COOK: Yes.

S. TURNER: And, Chairman Cook, isn't it true that switching to a capacity market would be a fundamental change from our current market design, which is commonly referred to as an "energy market," where generators are paid only for having a willing buyer to purchase their energy?

COOK: Yes.

S. TURNER: Now, the amendment offered by Chairman Fraser and I would have required the PUC to conduct a cost-benefit analysis before proceeding with a capacity market, isn't that correct?

COOK: Yes.

S. TURNER: But I believe it was removed because of concerns, among other things, regarding the potential for unintended consequences. Isn't that correct?

COOK: Yes.

S. TURNER: But would you nonetheless agree with me that we expect the PUC, before authorizing a capacity market or any other fundamental market change that could cost hundreds of millions or billions of dollars to our constituents annually, to first conduct some sort of cost-benefit analysis to evaluate the wisdom of such a significant market design change?

COOK: Yes, I agree.

S. TURNER: And, furthermore, would you agree with me that we expect the PUC to also check with this body for some guidance and direction before pursuing such an expensive and fundamental design change in Texas' electric market?

COOK: Yes, I agree.

S. TURNER: I certainly have that expectation, Chairman Cook. I appreciate you taking time to answer my questions.

REMARKS ORDERED PRINTED

Representative S. Turner moved to print remarks between Representative Cook and Representative S. Turner.

The motion prevailed.

HB 1600 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE SIMPSON: Thank you, Chairman Cook, and like Mr. Turner, I'd like to ask some questions with respect to legislative intent, just to be placed in the record. Do you have a copy of the correspondence from the PUC executive director concerning the amendment that Representative Sanford brought before the house, that would prohibit the PUC from issuing a cease and desist order against the retail customer?

REPRESENTATIVE COOK: Representative Simpson, I do have a copy. I do not have a copy with me, but I do have one, yes.

SIMPSON: Okay, I have one. If you need one, I can bring it to you. I think these questions will be enough that you can respond. As you, I believe, know, this communication from the PUC executive director states that the authority granted to the PUC is only over providers of services in electrical markets and not—for electrical markets and not consumers. Do you remember that in the letter?

COOK: Correct.

SIMPSON: And then, this bill states that the cease and desist order is only applicable to a person to whom Subtitle B applies. Is that not correct?

COOK: I believe that's correct.

SIMPSON: Well, I have a copy of it here, and it actually states that Subtitle B applies to a—and I quote now—"a public utility or other person," and then there is an ellipsis, "failing to comply with the requirements of this title or a rule or order of the commission." The PUC's communication, which you stated that they could find no precedent, that the use of the term "person" ever has been construed

to confer enforcement authority over retail customers. Additionally, we've been unable to identify any possible fact situation that would suggest a change to that precedent and the future. That's in the letter as well, is it not?

COOK: Well, you have the letter.

SIMPSON: Well, I have a number of constituents who can imagine scenarios where the PUC has authority over smart meters that could lead to the use of this section—enforcement against actual individual consumers. So, I have two questions for you. If the PUC sees no possibility of issuing a cease and desist order in the future, why would anyone oppose language in the bill such as that?

COOK: I'm sorry, I don't understand your question.

SIMPSON: If the PUC sees no possibility of using a cease and desist order against an individual consumer, why would we oppose any language in the bill that would keep it from enforcing such an order against an individual consumer?

COOK: Once again, I think it's already covered, Representative Simpson, in statute, so I don't think we found it necessary to restate.

SIMPSON: Well, it does state, in Subtitle B, that it applies to a public utility or other person, and in other places in that subtitle, it does use the word "person" to refer to individuals. So, would you be willing to go back to the senate and ask for that language to be reinserted?

COOK: No, I wouldn't.

SIMPSON: Can you explain why?

COOK: Mr. Simpson, I think it's been clearly stated why it's not necessary. I also visited with Representative Sanford, who accepted the language as agreeable, and I answered his questions, so I think we're in good shape. Mr. Simpson, you need to understand that this bill has been in the works for the last four years. I think it's incredibly important at this stage that we pass it. I can tell you that all the members of the conference committee on both sides—as a matter of fact, the senate passed this conference committee report today—and I would appreciate it if the house would also pass this conference committee this afternoon.

SIMPSON: Well, Chairman Cook, I appreciate all the work you've done, and it's clear that you and the commission don't intend for the order to be applied to individuals. I just wanted to make sure that was part of the record, and I appreciate your work.

Representative Simpson submitted the following letter from the Public Utility Commission of Texas to Representative Cook for inclusion in the journal:

With respect to the cease and desist authority provisions in **HB 1600**, the only difference between the house and senate versions of the bill is the inclusion of an express prohibition in the house bill that prohibits the Public Utility Commission (PUC) from issuing a cease and desist order against a retail

customer. As we discussed during the house debate on the bill, it is the view of the PUC that this does not substantively alter the authority granted to the PUC for the reasons listed below.

In both versions of the bill, new Subchapter D applies only to a "person" to whom Subtitle B of the Public Utility Regulatory Act (PURA) applies. First, Subtitle B of PURA outlines the PUC's regulation of the electricity industry in Texas. Thus, only activities in this industry are subject to the new cease and desist authority; no activities of any entity operating in the state's telecommunications market can be subject to a cease and desist order by the PUC under either version of **HB 1600**.

Secondly, the authority granted to the PUC in Subtitle B is over providers of services in the electricity markets, not consumers. That is, both PURA and PUC rules provide requirements for electric utilities, retail electricity providers, transmission and distribution utilities, electric cooperatives, municipally owned utilities, aggregators, and power generation companies. Currently, when we exercise our existing enforcement powers under Chapter 15 of PURA, we prosecute these entities for violations of state law or our rules, not individual consumers. While Section 11.003(14) of PURA defines "person" to include an individual, that only confers authority to the PUC over an individual acting in a capacity as a regulated provider of electricity services.

Consistent with this reading of PURA, we can find no precedent that the use of the term "person" throughout Chapter 15 has ever been construed to confer enforcement authority over retail customers. Additionally, we have been unable to identify any possible fact situation that would suggest a change to that precedent in the future—either for the agency's existing enforcement powers under Chapter 15, or the new cease and desist authority in **HB 1600**.

Therefore, it is PUC legal counsel's opinion that there is no substantive or practical difference in the cease and desist authority granted under the two versions of the bill, notwithstanding the "belts and suspenders" language contained in the house version.

I hope this provides a clear explanation of our view of this matter. As always, please do not hesitate to contact me if you have additional questions.

REMARKS ORDERED PRINTED

Representative Simpson moved to print remarks between Representative Cook and Representative Simpson and the PUC letter to Representative Cook.

The motion prevailed.

Representative Cook moved to adopt the conference committee report on **HB 1600**.

The motion to adopt the conference committee report on **HB 1600** prevailed by (Record 812): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson; Ashby; Aycock; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Button; Callegari; Canales; Capriglione; Carter; Clardy; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel;

Dukes; Dutton; Eiland; Elkins; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frullo; Geren; Giddings; Goldman; Gonzales; González, M.; Gonzalez, N.; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Hilderbran; Howard; Huberty; Hunter; Isaac; Kacal; Keffer; King, K.; King, P.; King, S.; King, T.; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Simpson; Smith; Smithee; Springer; Stephenson; Stickland; Strama; Taylor; Thompson, E.; Thompson, S.; Toth; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Vo; Walle; White; Workman; Wu; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Kleinschmidt; Villarreal.

Absent, Excused, Committee Meeting — Otto.

Absent — Frank; Gooden; Hughes; Johnson; Klick.

STATEMENTS OF VOTE

When Record No. 812 was taken, I was in the house but away from my desk. I would have voted yes.

Frank

When Record No. 812 was taken, my vote failed to register. I would have voted yes.

Gooden

When Record No. 812 was taken, my vote failed to register. I would have voted yes.

Johnson

I was shown voting yes on Record No. 812. I intended to vote no.

Stickland

(Burkett in the chair)

FIVE-DAY POSTING RULE SUSPENDED

Representative Smithee moved to suspend the five-day posting rule to allow the Committee on Insurance to consider **SB 1216**, **SB 1221**, **SB 1322**, **SB 1484**, **SB 1567**, and **SB 1672** at 8 a.m. tomorrow in E2.026.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Insurance, 8 a.m. tomorrow, E2.026, for a public hearing, to consider **SB 1216, SB 1221, SB 1322, SB 1484, SB 1567, and SB 1672.**

FIVE-DAY POSTING RULE SUSPENDED

Representative Herrero moved to suspend the five-day posting rule to allow the Committee on Criminal Jurisprudence to consider **SB 554** and **SB 1522** upon recess today in E2.016.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Criminal Jurisprudence, upon recess today, E2.016, for a public hearing, to consider **SB 554, SB 1522,** and previously posted business.

**PROVIDING FOR A CONGRATULATORY
AND MEMORIAL CALENDAR**

Representative McClendon moved to set a congratulatory and memorial calendar for 10 a.m. Wednesday, May 15.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Rules and Resolutions, upon recess today, Desk 89, for a formal meeting, to set a calendar.

PROVIDING FOR RECESS

At 5:25 p.m., Representative Dukes moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the house recess until 10 a.m. tomorrow in memory of Maria Peña of Dallas.

The motion prevailed.

**BILLS AND JOINT RESOLUTIONS ON FIRST READING
AND REFERRAL TO COMMITTEES
RESOLUTIONS REFERRED TO COMMITTEES**

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

(Taylor in the chair)

RECESS

In accordance with a previous motion, the house, at 5:31 p.m., recessed until 10 a.m. tomorrow.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HR 1891 (By Villarreal), Directing the Texas Education Agency to deploy resources and implement strategies to bridge the academic achievement gap between native and non-native English speakers in Texas schools.

To Public Education.

HR 1981 (By Craddick), Honoring Monsignor Larry Droll of St. Ann's Catholic Parish in Midland on the 40th anniversary of his ordination.

To Rules and Resolutions.

HR 1982 (By Craddick), Honoring Lindsey Wallace on his retirement as superintendent of the Dawson Independent School District.

To Rules and Resolutions.

HR 1983 (By Pickett), In memory of Sherman Hemsley of El Paso.

To Rules and Resolutions.

HR 1984 (By Bohac), In memory of Dawn Williams Trozzo of Houston.

To Rules and Resolutions.

HR 1985 (By Bohac), In memory of Dorothy Bettencourt of Houston.

To Rules and Resolutions.

HR 1986 (By Bohac), Congratulating Zachary Godlewski of Houston on attaining the rank of Eagle Scout.

To Rules and Resolutions.

HR 1987 (By Bohac), In memory of Marvin Glenn Smith of Houston.

To Rules and Resolutions.

HR 1988 (By Anchia), In memory of Robert W. Edgar, president of Common Cause.

To Rules and Resolutions.

HR 1989 (By Anchia), Honoring Manny Gonzalez as a participant in the 2013 Moreno/Rangel Legislative Leadership Program.

To Rules and Resolutions.

HR 1990 (By Ashby), Honoring George Chandler of Lufkin for his accomplishments.

To Rules and Resolutions.

HR 1991 (By Villalba), Honoring the Junior League of Dallas.
To Rules and Resolutions.

HR 1992 (By Villalba), Congratulating the Leadership Cadet Corps of Thomas C. Marsh Middle School in Dallas on winning the 2013 National Middle School Cadet Corps Drill Competition.
To Rules and Resolutions.

HR 1993 (By Laubenberg), Congratulating the Plano East Senior High School Marching Band on earning the 2013 John Philip Sousa Foundation Sudler Shield Award.
To Rules and Resolutions.

HR 1994 (By Miles), Honoring civil and labor rights activist John W. Bland of Houston.
To Rules and Resolutions.

HR 1995 (By Herrero), In memory of Mary Lou Trevino of Robstown.
To Rules and Resolutions.

HR 1996 (By Herrero), In memory of Hector M. Lopez, Sr., of Robstown.
To Rules and Resolutions.

HR 1997 (By Herrero), In memory of Estelle Sawyer of Corpus Christi.
To Rules and Resolutions.

HR 1998 (By Herrero), In memory of Israel Saenz Trevino of Robstown.
To Rules and Resolutions.

HR 1999 (By Herrero), In memory of Clemente Perez of Robstown.
To Rules and Resolutions.

HR 2000 (By Zerwas), Congratulating Jim Short on his many achievements in the cutting horse arena.
To Rules and Resolutions.

HR 2001 (By Lozano), Commemorating the 75th anniversary of the Rotary Club of Alice.
To Rules and Resolutions.

HR 2002 (By Lozano), Honoring Margarita Moreno for her 40-year teaching career in the Kingsville Independent School District.
To Rules and Resolutions.

HR 2003 (By Lozano), Congratulating R. David Guerrero on his receipt of the Citizen of the Year award from the Alice Chamber of Commerce.
To Rules and Resolutions.

HR 2004 (By Lozano), Congratulating Kristen Franki on her receipt of the Junior Citizen of the Year award from the Alice Chamber of Commerce.
To Rules and Resolutions.

HR 2005 (By Naishtat), Recognizing the importance of postsecondary education for persons with intellectual disabilities.
To Rules and Resolutions.

HR 2006 (By Geren), Designating the grandchildren of house members as honorary mascots.

To House Administration.

HR 2007 (By Y. Davis), Congratulating Mark Brady on his induction into the DeSoto Independent School District Hall of Honor.

To Rules and Resolutions.

HR 2008 (By Y. Davis), Congratulating Shirley Cooper on her induction into the DeSoto Independent School District Hall of Honor.

To Rules and Resolutions.

HR 2009 (By Y. Davis), Congratulating former superintendent Frank Moates on his induction into the DeSoto Independent School District Hall of Honor.

To Rules and Resolutions.

HR 2010 (By Y. Davis), Congratulating James P. Monkres, Jr., on his induction into the DeSoto Independent School District Hall of Honor.

To Rules and Resolutions.

HR 2011 (By Sanford), Honoring Megan Pulley for her service as district director in the office of Representative Scott Sanford.

To Rules and Resolutions.

HR 2012 (By Oliveira), Honoring David Lykes of Georgetown on his contributions to Hispanic radio.

To Rules and Resolutions.

HR 2013 (By Oliveira), Congratulating Frances Etheridge on her retirement from the Point Isabel Independent School District.

To Rules and Resolutions.

HR 2014 (By E. Rodriguez), In memory of Kathryn Ann Pierce of Austin.

To Rules and Resolutions.

HR 2016 (By Hughes), Congratulating Brad Gibson, Alba-Golden High School girls' basketball coach, on being named a 2013 Coach of the Year by the Tyler Morning Telegraph.

To Rules and Resolutions.

HR 2017 (By Hughes), Congratulating Mineola High School girls' basketball coach Clayton Harris on being named Coach of the Year by the Tyler Morning Telegraph.

To Rules and Resolutions.

HR 2018 (By Hughes), Commemorating the 100th anniversary of Guaranty Bond Bank in East Texas.

To Rules and Resolutions.

HR 2019 (By Hughes), Honoring Dona Julian Cassel for her contributions to Texas A&M University–Commerce.

To Rules and Resolutions.

SB 14 to Appropriations.

SB 883 to Licensing and Administrative Procedures.

SB 1159 to Defense and Veterans' Affairs.

SB 1304 to Public Education.

SB 1512 to Government Efficiency and Reform.

SB 1612 to Natural Resources.

SB 1871 to Culture, Recreation, and Tourism.

SJR 1 to Appropriations.

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

Senate List No. 25

SB 181, SB 233, SB 245, SB 274, SB 350, SB 376, SB 487, SB 610, SB 620, SB 651, SB 654, SB 661, SB 670, SB 696, SB 727, SB 748, SB 821, SB 860, SB 864, SB 878, SB 887, SB 984, SB 1004, SB 1093, SB 1133, SB 1191, SB 1212, SB 1300, SB 1360, SB 1427, SB 1538, SB 1589, SB 1814, SB 1889, SCR 35

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Monday, May 13, 2013 - 1

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SB 14 Williams

Relating to the fiscal transparency and accountability of certain entities responsible for public money.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Monday, May 13, 2013 - 2

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 525 Aycok SPONSOR: Fraser
Relating to the collection of data relating to military-connected students through the Public Education Information Management System (PEIMS).

HB 740 Crownover SPONSOR: Deuell
Relating to newborn screening for critical congenital heart disease and other disorders.
(Amended)

HB 752 Longoria SPONSOR: Hinojosa
Relating to the types of entities that are considered municipal water suppliers for purposes of the law governing the effect of the subdivision of certain land on certain irrigation water rights.
(Amended)

HB 839 Guillen SPONSOR: Zaffirini
Relating to the powers, duties, and compensation of the board of directors of the Duval County Groundwater Conservation District.

HB 857 Lucio III SPONSOR: Ellis
Relating to the frequency of water audits by certain retail public utilities.
(Committee Substitute/Amended)

HB 1061 Branch SPONSOR: Birdwell
Relating to the repeal of the statutory authority for the State Medical Education Board.

HB 1106 Larson SPONSOR: Estes
Relating to the identification and operation of vessels in the waters of this state; authorizing a change in fees.
(Amended)

HB 1238 Price SPONSOR: Seliger
Relating to the designation of a portion of U.S. Highway 287 in Sherman and Dallam Counties as the Trooper Bobby Steve Booth Memorial Highway.

HB 1717 Price SPONSOR: Nichols
Relating to the continuation and functions of the Texas Board of Architectural Examiners; changing certain fees.

(Amended)

HB 1738 Naishtat SPONSOR: Zaffirini
Relating to the emergency detention by a peace officer of a person who may have mental illness, including information provided to the person subject to detention and a standard form of notification of detention to be provided to a facility by a peace officer.

(Committee Substitute)

HB 1768 Canales SPONSOR: Hinojosa
Relating to identification requirements for certain fire hydrants and flush valves.
(Amended)

HB 1844 Branch SPONSOR: West
Relating to the official name of The University of Texas Southwestern Medical Center.

HB 2311 Kacal SPONSOR: Schwertner
Relating to an animal identification program.

HJR 79 Branch SPONSOR: Birdwell
Proposing a constitutional amendment to eliminate an obsolete requirement for a State Medical Education Board and a State Medical Education Fund.

SB 1304 Davis
Relating to school district reports concerning corporal punishment and the issuance of citations by a peace officer.

SB 1512 Ellis
Relating to the confidentiality of certain crime scene photographs and video recordings.

SB 1871 Estes
Relating to eligibility for burial in the state cemetery.

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Monday, May 13, 2013 - 3

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 458 Bohac SPONSOR: Estes

Relating to eligibility requirements for a residential fire alarm training school instructor.

THE SENATE HAS CONCURRED IN THE HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 567 (31 Yeas, 0 Nays)

SB 822 (31 Yeas, 0 Nays)

THE SENATE HAS REFUSED TO CONCUR IN THE HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

SB 1546

Senate Conferees: Eltife - Chair/Seliger/Taylor/Watson/Zaffirini

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1600 (31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

May 10

County Affairs - **SB 356, SB 382, SB 1167, SB 1473**

Criminal Jurisprudence - **SB 358, SB 701, SB 967, SB 1096**

Defense and Veterans' Affairs - **SB 1376**

Economic and Small Business Development - **SB 1719**

Elections - **SB 148, SB 578, SB 910**

Energy Resources - **SB 1063**

Environmental Regulation - **SB 819, SB 1156, SB 1756**

Homeland Security and Public Safety - **SB 1238, SB 1556, SB 1705**

Human Services - **SB 1803**

International Trade and Intergovernmental Affairs - **HCR 80, HCR 106, SB 1046, SB 1425**

Judiciary and Civil Jurisprudence - **SB 209, SJR 42**

Natural Resources - **HB 1173**

Public Health - **SB 746**

Transportation - **SB 1294**

ENGROSSED

May 10 - HB 12, HB 16, HB 34, HB 97, HB 133, HB 217, HB 315, HB 382, HB 503, HB 577, HB 581, HB 586, HB 690, HB 709, HB 741, HB 862, HB 868, HB 912, HB 1125, HB 1174, HB 1199, HB 1289, HB 1340, HB 1352, HB 1382, HB 1461, HB 1468, HB 1511, HB 1650, HB 1712, HB 1829, HB 1843, HB 2145, HB 2163, HB 2224, HB 2233, HB 2234, HB 2314, HB 2373, HB 2385, HB 2419, HB 2423, HB 2500, HB 2518, HB 2578, HB 2625, HB 2676, HB 2690, HB 2765, HB 2869, HB 2971, HB 2972, HB 3005, HB 3013, HB 3029, HB 3065, HB 3081, HB 3227, HB 3279, HB 3350, HB 3399, HB 3437, HB 3442, HB 3476, HB 3498, HB 3509, HB 3552, HB 3593, HB 3597, HB 3643, HB 3660, HB 3669, HB 3750, HB 3769, HB 3793, HB 3934, HB 3952, HJR 62

SIGNED BY THE GOVERNOR

May 10 - HB 174, HB 701, HB 2035, HCR 31, HCR 43, HCR 47, HCR 67, HCR 75, HCR 85, HCR 90, HCR 91, HCR 94, HCR 98, HCR 99, HCR 100, HCR 101, HCR 105, HCR 107, HCR 108, HCR 118