

Selected Provisions of the  
Texas Water Code,  
Local Government Code, and  
Special District Local Laws Code

(As Amended)

Effective as of September 1, 2015

PUBLIC UTILITY COMMISSION  
OF TEXAS

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## FOREWORD

This 2015 edition of select statutes of the Texas Water Code, Local Government Code, and Special District Local Law Code contains amendments adopted through the 84th Legislature, Regular Session, which reflect the regulatory functions related to water and wastewater utilities transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas in 2013. It includes Chapter 13 of the Water Code in its entirety. Chapter 13 provides the primary authority for and regulation of water and sewer rates and service. It also includes select provisions of chapters 5, 11, 12, and 49 of the Water Code related to the Public Utility Commission's authority related to water and wastewater utilities. In addition, chapter 65 of the Water Code related to special utility districts is included for convenience.

The Texas Water Code was adopted by Act of March 29, 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1. The annotations following each section show the origination of the section as either an article in the Revised Civil Statutes or, for new sections, chapter 58 of Acts 1971. For sections added after adoption of the Water Code the first annotation shows the act that added that section. For some sections impacted by a major reorganization of the Water Code in 1977 the annotation also identifies the section in the original adoption of the Water Code. Subsequent annotations show amendments to the section.

Additional provisions in the Texas Local Government Code and the Texas Special District Local Laws Code have been included to the extent that the authority of the Public Utility Commission is implicated.

This publication is maintained by the Commission Advising and Docket Management Division of the Public Utility Commission of Texas. Suggestions or corrections may be submitted electronically to that division at the following address:

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# TEXAS WATER CODE

## TITLE 1. GENERAL PROVISIONS

### CHAPTER 1. GENERAL PROVISIONS

#### SUBCHAPTER A. PURPOSE AND POLICY

##### **Sec. 1.001. PURPOSE OF CODE.**

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent water law more accessible and understandable, by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

(c) This restatement shall not in any way make any changes in the substantive laws of the State of Texas.

(d) Laws of a local or special nature, such as statutes creating various kinds of conservation and reclamation districts, are not included in, or affected by, this code. The legislature believes that persons interested in these local and special laws may rely on the session laws and on compilations of these laws.

(Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.)

**Note: Art. 5429b-1 referenced in subsection (a) was repealed; see now Tex. Gov't Code §§ 323.007-.008.**

##### **Sec. 1.002. CONSTRUCTION OF CODE.**

(a) The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

(b) In this code:

- (1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and
- (2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

(c) A reference in a law to a statute or part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

(Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1985, 69th Leg., R.S., ch. 479 (SB 813), § 74; Acts 1995, 74th Leg., R.S., ch. 715 (SB 626), § 1 (relettered sec. as subsec. (a) and added subsec. (b) and (c)).)

**Sec. 1.003. PUBLIC POLICY.**

It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

- (1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;
- (2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of the state's overflowed land and other land needing drainage;
- (4) the conservation and development of its forest, water, and hydroelectric power;
- (5) the navigation of the state's inland and coastal waters;
- (6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources;
- (7) the voluntary stewardship of public and private lands to benefit waters of the state; and
- (8) the promotion of rainwater harvesting for potable and nonpotable purposes at public and private facilities in this state, including residential, commercial, and industrial buildings.

(Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1975, 64th Leg., R.S., ch. 344 (SB 137), § 1 (added subd. (6)); Acts 2007, 80th Leg., R.S., ch. 1352, § 1 (added subd. (7)); Acts 2007, 80th Leg., R.S., ch. 1430, § 2.01 (added subd (7)); Acts 2011, 82nd Leg., R.S., ch. 1311 (HB 3391), § 7 (added subd (8)).)

**Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP.**

(a) The legislature finds that voluntary land stewardship enhances the efficiency and effectiveness of this state's watersheds by helping to increase surface water and groundwater supplies, resulting in a benefit to the natural resources of this state and to the general public. It is therefore the policy of this state to encourage voluntary land stewardship as a significant water management tool.

(b) "Land stewardship," as used in this code, is the voluntary practice of managing land to conserve or enhance suitable landscapes and the ecosystem values of the land. Land stewardship includes land and habitat management, wildlife conservation, and watershed protection. Land stewardship practices include runoff reduction, prescribed burning, managed grazing, brush management, erosion management, reseeding with native plant species, riparian management and restoration, and spring and creek-bank protection, all of which benefit the water resources of this state.

(Added by Acts 2007, 80th Leg., R.S., ch. 1352, § 2; Acts 2007, 80th Leg., R.S., ch. 1430, § 2.02.)

**Sec. 1.005. LIMITATION ON EXERCISE OF EMINENT DOMAIN POWER.**

An entity governed by this code and authorized by law to exercise the power of eminent domain may only exercise the power for a public use in accordance with Section 17, Article I, Texas Constitution.

(Added by Acts 2013, 83rd Leg., R.S., ch. 92 (SB 655), § 2.)



## **TITLE 2. WATER ADMINISTRATION**

### **SUBTITLE A. EXECUTIVE AGENCIES**

#### **CHAPTER 5. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

(Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139) revised title 2 by moving former chapter 5, Water Rights, to chapter 11 and renumbering some sections, and enacting a new chapter 5, Texas Department of Water Resources. Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.001 retitled chapter 5 as Texas Water Commission and revised the chapter. Acts 1995, 74th Leg., R.S., ch. 76, § 11.282 retitled chapter 5 as Texas Natural Resource Conservation Commission. Acts 2011, 82nd Leg., R.S., ch. 1021 (HB 2694), § 1.10 retitled chapter as Texas Commission on Environmental Quality).

#### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **Sec. 5.001. DEFINITIONS.**

In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Commission on Environmental Quality.
- (3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

\* \* \* \* \*

(Amended by Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139), § 1; Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.001 (changed name from Department of Water Resources to Texas Water Commission in subds. (2) & (3)); Acts 1991, 72nd Leg., R.S., 1st C.S., ch. 3 (SB 2), § 1.001 (renamed Texas Natural Resource Conservation Commission in subds. (2) & (3)); Acts 2005, 79th Leg., R.S., ch. 1097, § 6 (changed name to Texas Commission on Environmental Quality and added subds. (4)-(7)).)

\* \* \* \* \*

#### **SUBCHAPTER B. ORGANIZATION OF THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

(Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.001 retitled subchapter from Texas Department of Water Resources to Texas Water Commission and revised the chapter. Acts 1991, 72nd Leg., R.S., 1st C.S., ch. 3 (SB 2), § 1.001 retitled subchapter from Texas Water Commission to Texas Natural Resource Conservation Commission)

\* \* \* \* \*

##### **Sec. 5.013. GENERAL JURISDICTION OF COMMISSION.**

(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, 401, 505, 506, and 507 Health and Safety Code; and
- (12) any other areas assigned to the commission by this code and other laws of this state.

(b) The rights, powers, duties, and functions delegated to the Texas Department of Water Resources by this code or by any other law of this state that are not expressly assigned to the board are vested in the commission.

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

(Amended by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.001; Acts 1991, 72nd Leg., R.S., ch. 14 (SB 404), § 284(75) (amended subd. (a)(12)); Acts 1991, 72nd Leg., R.S., 1st C.S., ch. 3 (SB 2), § 1.005 (amended subs. (a)(7) & (12)); Acts 2001, 77th Leg., R.S., ch. 376 (SB 1175), § 3.01 (repealed subd. (4) and renumbered former subs. (5) to (15) as (4) to (14)); Acts 2001, 77th Leg., R.S., ch. 965 (HB 2912), § 1.01 (added subsec. (c)); Acts 2003, 78th Leg., R.S., ch. 1067, § 22 (amended subd. (11)); Acts 2007, 80th Leg., R.S., ch. 1323, § 2 (repealed former subd. 12 and renumbered former subs. (13) & (14) and (12) & (13)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.01 (repealed former subd. (12) and renumbered former subd. (13) as (12)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1 (repealed former subd. (12) and renumbered former subd. (13) as (12)); Acts 2015, 84th Leg., R.S., ch. 515 (HB 942) § 32 (amended subd. (11)).)

**Note: Acts 2013 removed former subd. (a)(12) that gave the TCEQ authority over water rates under ch. 13.**

\* \* \* \* \*

## SUBCHAPTER H. DELEGATION OF HEARINGS

### Sec. 5.311. DELEGATION OF RESPONSIBILITY.

(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.

(b) Except as provided in Subsection (a), the administrative law judge shall report to the commission on the hearing in the manner provided by law.

(Amended by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.001; Acts 1995, 74th Leg., R.S., ch. 106 (SB 12), § 2 (renumbered from Water Code § 5.313 and amended); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1),

§ 6.01 (amended subsecs. (a) & (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.02 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 2(amended subsec. (a)).

**Note: Acts 2013 deleted the provision in subsec. (a) that gave TCEQ authority to delegate authority to SOAH to issue interlocutory orders related to interim rates under ch. 13.**

\* \* \* \* \*

## **SUBCHAPTER L. EMERGENCY AND TEMPORARY ORDERS**

### **Sec. 5.501. EMERGENCY AND TEMPORARY ORDER OR PERMIT; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITION.**

- (a) For the purposes and in the manner provided by this subchapter, the commission:
- (1) may issue a temporary or emergency mandatory, permissive, or prohibitory order; and
  - (2) by temporary or emergency order may:
    - (A) issue a temporary permit; or
    - (B) temporarily suspend or amend a permit condition.

(b) The commission may issue an emergency order under this subchapter after providing the notice and opportunity for hearing that the commission considers practicable under the circumstances or without notice or hearing. Except as provided by Section 5.506, notice 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. The commission shall give notice not later than the 20th day before the date set for a hearing on a temporary order.

(c) The commission by order or rule may delegate to the executive director the authority to:

- (1) receive applications and issue emergency orders under this subchapter; and
- (2) authorize, in writing, a representative or representatives to act on the executive director's behalf under this subchapter.

(d) Chapter 2001, Government Code, does not apply to the issuance of an emergency order under this subchapter without a hearing.

(e) A law under which the commission acts that requires notice of hearing or that sets procedures for the issuance of permits does not apply to a hearing on an emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. The commission shall give the general notice of the hearing that the commission considers practicable under the circumstances.

(f) An emergency or temporary order issued under this subchapter does not vest in the permit holder or recipient any rights and expires in accordance with its terms.

(g) The commission may prescribe rules and adopt fees necessary to carry out and administer this subchapter.

(Added by Acts 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1.)

### **Sec. 5.502. APPLICATION FOR EMERGENCY OR TEMPORARY ORDER.**

A person other than the executive director or the executive director's representative who desires an emergency or temporary order under this subchapter must submit a sworn written application to the commission. The application must:

- (1) describe the condition of emergency or other condition justifying the issuance of the order;

- (2) allege facts to support the findings required under this subchapter;
  - (3) estimate the dates on which the proposed order should begin and end;
  - (4) describe the action sought and the activity proposed to be allowed, mandated, or prohibited;
- and
- (5) include any other statement or information required by this subchapter or by the commission.

(Added by Acts 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1.)

**Sec. 5.503. NOTICE OF ISSUANCE.**

Notice of the issuance of an emergency order shall be provided in accordance with commission rules.

(Added by Acts 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1.)

**Sec. 5.504. HEARING TO AFFIRM, MODIFY, OR SET ASIDE ORDER.**

(a) If the commission, the executive director, or the executive director's representative issues an emergency order under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held before the commission or its designee as soon as practicable after the order is issued.

(b) At or following the hearing required under Subsection (a), the commission shall affirm, modify, or set aside the emergency order.

(c) A hearing to affirm, modify, or set aside an emergency order shall be conducted in accordance with Chapter 2001, Government Code, and commission rules. Commission rules concerning a hearing to affirm, modify, or set aside an emergency order must provide for presentation of evidence by the applicant under oath, presentation of rebuttal evidence, and cross-examination of witnesses.

(Added by Acts 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1.)

**Sec. 5.505. TERM OF ORDER.**

An emergency or temporary order issued under this subchapter must be limited to a reasonable time specified by the order. Except as otherwise provided by this subchapter, the term of an emergency order may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

(Added by Acts 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1.)

**Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.**

(a) The commission by emergency or temporary order may suspend a permit condition relating to beneficial inflows to affected bays and estuaries and instream uses if the commission finds that an emergency exists that cannot practicably be resolved in another way.

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1). The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action for a period of 72 hours from

receipt of the notice and must consider those comments before issuing an order implementing the proposed action.

(c) The commission may suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice except as required by Subsection (b).

(d) The commission shall notify all affected persons immediately by publication.

(Added by Acts 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1.) (Amended by: Acts 2007, 80th Leg., R.S., ch. 1351, § 1.01 (amended heading); Acts 2007, 80th Leg., R.S., ch. 1351, § 1.02 (amended subsecs. (b) & (c) and added subsec. (a-1)); Acts 2007, 80th Leg., R.S., ch. 1430, § 1.01 (amended heading); Acts 2007, 80th Leg., R.S., ch. 1430, § 1.02 (amended subsecs. (b) & (c) and added subsec. (a-1)).)

**Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.**

The commission 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.

(Added by Acts 1997, 75th Leg., R.S., ch. 1072.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.03 (added Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 3 (added Public Utility Commission of Texas); Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 2 (removed Public Utility Commission of Texas).)

**Sec. 5.508. [Repealed]**

(Added by Acts 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.04; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 4.) (Repealed by Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 10.)

\* \* \* \* \*

**SUBCHAPTER P. FEES**

**Sec. 5.701. FEES.**

\* \* \* \* \*

(n)(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:

(A) A public utility as defined in Section 13.002 shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) A water supply or sewer service corporation as defined in Section 13.002 shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(C) A district as defined in Section 49.001 that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(2) The regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) The assessments collected under this subsection may be appropriated by a rider to the General Appropriations Act to an agency with duties related to water and sewer utility regulation or

representation of residential and small commercial consumers of water and sewer utility services solely to pay costs and expenses incurred by the agency in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13.

(4) The commission shall annually use a portion of the assessments to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.

(5) The commission by rule may establish due dates, collection procedures, and penalties for late payment related to regulatory assessments under this subsection. The executive director shall collect all assessments from the utility service providers.

(6) The commission shall assess a penalty against a municipality with a population of more than 1.5 million that does not provide municipal water and sewer services in an annexed area in accordance with Section 43.0565, Local Government Code. A penalty assessed under this paragraph shall be not more than \$1,000 for each day the services are not provided after March 1, 1998, for areas annexed before January 1, 1993, or not provided within 4-1/2 years after the effective date of the annexation for areas annexed on or after January 1, 1993. A penalty collected under this paragraph shall be deposited to the credit of the water resource management account to be used to provide water and sewer service to residents of the city.

(7) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(Added by Acts 1985, 69th Leg., R.S., ch. 239 (HB 1593), § 38 (as sec. 5.182).) (Amended by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.001 (renumbered from sec. 5.182 to sec. 5.235); Acts 1987, 70th Leg., R.S., ch. 399 (HB 1328), § 1 (amended subsecs. (e) & (f)); Acts 1991, 72nd Leg., R.S., ch. 710 (HB 1986), § 10 (amended subsec. (b)); Acts 1991, 72nd Leg., 1st C.S., ch. 3, §§ 1.021 and 4.01; Acts 1993, 73rd Leg., R.S., ch. 564 (SB 1234), § 1.02 (amended subsec. (h)); Acts 1993, 73rd Leg., R.S., ch. 746 (HB 2605), § 1 (amended subsecs. (a), (e), (f), (k), (l), (m) and subds. (n)(3) and deleted subds. (n)(4), (5) & (7)(A) & (B) and relettered former subds. (6), (7), (7)(C), & (8) as subds. (4), (5), (6) & (7)); Acts 1993, 73rd Leg., R.S., ch. 772 (HB 2714), § 1 (amended subd. (7)(C) without reference to amendment by ch. 746); Acts 1997, 75th Leg., R.S., ch. 333 (HB 3231), § 1 (amended subsecs. (a), (b), (f) and (n)(1)(C), (n)(5), & (n)(6)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 4.42; § 4Acts 2001, 77th Leg., R.S., ch. 965 (HB 2912), § 3.02 (redesignated from § 5.235 to 5.701 and amended subsec. (e) and added subsecs. (p) & (q)); Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 4.03; Acts 2003, 78th Leg., R.S., ch. 200, § 6(a) (added subsec. (r)); Acts 2007, 80th Leg., R.S., ch. 1351, § 1.03; Acts 2007, 80th Leg., R.S., ch. 1430, § 1.03; 81st Leg., R.S., ch. 1316 (HB 2667), § 4; Acts 2011, 82nd Leg., R.S., ch. 1021 (HB 2694), §§ 2.07, 6.03).

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**SUBTITLE B. WATER RIGHTS**  
**CHAPTER 11. WATER RIGHTS**

(Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139) revised title 2 by moving former chapter 5, Water Rights, to chapter 11 and renumbering some sections, and enacting a new chapter 5, Texas Department of Water Resources.

**SUBCHAPTER A. GENERAL PROVISIONS**

\* \* \* \* \*

**Sec. 11.002. DEFINITIONS.**

In this chapter and in Chapter 12 of this code:

- (1) "Commission" means the Texas Natural Resource Conservation Commission.
- (2) "Board" means the Texas Water Development Board.
- (3) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.
- (4) "Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.
- (5) "Water right" means a right acquired under the laws of this state to impound, divert, or use state water.
- (6) "Appropriator" means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.
- (7) Renumbered as subd. (6) by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.003, eff. Sept. 1, 1985.
- (8) "Conservation" means:
  - (A) the development of water resources; and
  - (B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
- (9) "Conserved water" means that amount of water saved by a holder of an existing permit, certified filing, or certificate of adjudication through practices, techniques, and technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from storage, transportation, distribution, or application.
- (10) "Surplus water" means water in excess of the initial or continued beneficial use of the appropriator.
- (11) "River basin" means a river or coastal basin designated by the board as a river basin under Section 16.051. The term does not include waters originating in the bays or arms of the Gulf of Mexico.

(12) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management;

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and

(G) aquaculture, as defined by Section 134.001, Agriculture Code.

(13) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(14) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(15) "Environmental flow analysis" means the application of a scientifically derived process for predicting the response of an ecosystem to changes in instream flows or freshwater inflows.

(16) "Environmental flow regime" means a schedule of flow quantities that reflects seasonal and yearly fluctuations that typically would vary geographically, by specific location in a watershed, and that are shown to be adequate to support a sound ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section 11.1471.

(18) "Advisory group" means the environmental flows advisory group.

(19) "Science advisory committee" means the Texas environmental flows science advisory committee.

(20) "Best management practices" means those voluntary efficiency measures developed by the commission and the board that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specified time frame.

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

(V.A.C.S. arts. 7473 (part); 7476; 7477, § 2; 7542; 7542a, § 2) (V.T.C.A. Water Code § 5.002, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139), § 1 (renumbered sec. from 5.002); Acts 1985, 69th Leg., R.S., ch. 133 (HB 2), § 1.01 (added subd. (8)); Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.003 (amended subd. (3), repealed subd. 4), and relettered former subds. (5) to (7) as (4) to (6)); Acts 1991, 72nd Leg., R.S., 1st C.S., ch. 3 (SB 2), § 1.057 (amended subds. (1) & (3)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 2.02; Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 2.01 (added subds. (11) to (14)); Acts 2001, 77th Leg., R.S., ch. 1234, § 11 (amended subd. (11)); Acts 2007, 80th Leg., R.S., ch. 1351,



§ 1.04 (added subds. (15), (16), (17), (18), & (19)); Acts 2007, 80th Leg., R.S., ch. 1352, § 4 (added subd. (15)); Acts 2007, 80th Leg., R.S., ch. 1430, §§ 1.04 (added subds. (15), (16), (17), (18) & (19), 2.04 (added subd. (20)); Acts 2009, 81st Leg., R.S., ch. 87 (SB 1969), § 24.001; Acts 2011, 82nd Leg., R.S., ch. 1021 (HB 2694), § 5.01 (added subd. (12)(G)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.05 (added subd. (21)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 5 (added subd. (21)).

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## **SUBCHAPTER B. RIGHTS IN STATE WATER**

### **Sec. 11.021. STATE WATER.**

(a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

(b) Water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

(V.A.C.S. art. 7467 (a) (part), (b)) (V.T.C.A. Water Code § 5.021, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.021).)

### **Sec. 11.022. ACQUISITION OF RIGHT TO USE STATE WATER.**

The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

(V.A.C.S. art. 7467 (part)) (V.T.C.A. Water Code § 5.022, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.022).)

### **Sec. 11.023. PURPOSES FOR WHICH WATER MAY BE APPROPRIATED.**

(a) To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs, state water may be appropriated, stored, or diverted for:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;
- (2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) mining and recovery of minerals;
- (4) hydroelectric power;
- (5) navigation;
- (6) recreation and pleasure;
- (7) public parks; and
- (8) game preserves.

(b) State water also may be appropriated, stored, or diverted for any other beneficial use.

(c) Unappropriated storm water and floodwater may be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

(d) When it is put or allowed to sink into the ground, water appropriated under Subsection (c) of this section loses its character and classification as storm water or floodwater and is considered percolating groundwater.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code. The commission may authorize appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.

(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

(V.A.C.S. art. 7468, 7470) (V.T.C.A. Water Code § 5.023, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., ch. 870 (SB 1139), § 1; Acts 1997, 75th Leg., ch. 1010 (SB 1), § 2.03 (amended subsec. (e)); Acts 2001, 77th Leg., ch. 966 (SB 2), § 2.02 (amended subd. (2), repealed subd. (4) and renumbered former subds. (5) to (8) as (4) to (7) and repealed subd. (9) and renumbered former subd. (10) as (8)); Acts 2007, 80th Leg., R.S., Ch. 1351 (HB 3), § 1.05 (amended subsec. (a)); Acts 2007, 80th Leg., R.S., ch. 1430 (SB 3), § 1.05(amended subsec. (a)).)

**Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE.**

(a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

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(Added by Acts 2003, 78th Leg., ch. 1242, § 2, eff. June 20, 2003.) (Amended by Acts 2007, 80th Leg., R.S., ch. 1351 (HB 3), § 1.06 (amended subsecs. (c) & (e) and added new subsecs. (d-1) to (d-6) & (f)); Acts 2007, 80th Leg., R.S., ch. 1352 (HB 4), § 5 (amended subsec. (b)); 80th Leg., R.S., ch. 1430 (SB 3), § 1.06(amended subsecs. (b), (c), & (e) and added subsecs. (d-1) to (d-6) & (f)).)

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**Sec. 11.0275. FAIR MARKET VALUE.**

Whenever the law requires the payment of fair market value for a water right, fair market value shall be determined by the amount of money that a willing buyer would pay a willing seller, neither of which is under any compulsion to buy or sell, for the water in an arms-length transaction and shall not be limited to the amount of money that the owner of the water right has paid or is paying for the water.

(Added by Acts 1997, 75th Leg., ch. 1010 (SB 1), § 2.04.)

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**Sec. 11.036. CONSERVED OR STORED WATER: SUPPLY CONTRACT.**

(a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.

(b) The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If the contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.

(c) The terms of a contract may expressly provide that the person using the stored or conserved water is required to develop alternative or replacement supplies prior to the expiration of the contract and may further provide for enforcement of such terms by court order.(d) If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

(V.A.C.S. art. 7547) (V.T.C.A. Water Code § 5.036, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.036); Acts 1997, 75th Leg., ch. 1010 (SB 1), § 2.05 (amended subsec. (b) and added subsec. (c)).)

**Sec. 11.037. WATER SUPPLIERS: RULES AND REGULATIONS.**

(a) Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by this chapter shall make and publish reasonable rules and regulations relating to:

- (1) the method of supply;
- (2) the use and distribution of the water; and
- (3) the procedure for applying for the water and for paying for it.

(b) Each person, association of persons, corporation, and district authorized by law to carry out irrigation powers that is conserving or supplying water for any of the purposes authorized by this chapter may make and publish reasonable rules relating to water conservation, as defined by Subdivision (8)(B), Section 11.002, of this code.

(V.A.C.S. art. 7570) (V.T.C.A. Water Code § 5.037, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.037); Acts 1985, 69th Leg., ch. 133 (HB 2), Sec. 1.10 (relettered sec. as subsec. (a) and added subsec. (b)).)

**Sec. 11.038. RIGHTS OF OWNERS OF LAND ADJOINING CANAL, ETC.**

(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water for agricultural uses, mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of the person's contract.

(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for agricultural uses, mining, milling, manufacturing, development of power, or stock raising, then the party owning or

controlling the water, if the person has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

(V.A.C.S. art. 7556) (V.T.C.A. Water Code § 5.038, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.038); Acts 2001, 77th Leg., ch. 966 (SB 2), § 2.04 (amended subsecs (a) & (b)).)

#### **Sec. 11.039. DISTRIBUTION OF WATER DURING SHORTAGE.**

(a) If a shortage of water in a water supply not covered by a water conservation plan prepared in compliance with Texas Natural Resource Conservation Commission or Texas Water Development Board rules results from drought, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

(b) If a shortage of water in a water supply covered by a water conservation plan prepared in compliance with Texas Natural Resource Conservation Commission or Texas Water Development Board rules results from drought, accident, or other cause, the person, association of persons, or corporation owning or controlling the water shall divide the water to be distributed among all customers pro rata, according to: (1) the amount of water to which each customer may be entitled; or (2) the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with the water conservation plan.

(c) Nothing in Subsection (a) or (b) precludes the person, association of persons, or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

(V.A.C.S. arts. 7557, 7558) (V.T.C.A. Water Code § 5.039, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Added by Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.039).) (Amended by Acts 2001, 77th Leg., R.S., ch. 1126 (HB 2588), § 1 (amended subsec. (a), relettered former subsec. (b) as subsec. (c), and added new subsec. (b)).)

#### **Sec. 11.040. PERMANENT WATER RIGHT.**

(a) A permanent water right is an easement and passes with the title to land.

(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.

(c) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

(V.A.C.S. art. 7559) (V.T.C.A. Water Code § 5.040, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.040).)

#### **Sec. 11.041. DENIAL OF WATER: COMPLAINT.**

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the commission a written petition showing:

- (1) that he is entitled to receive or use the water;
- (2) that he is willing and able to pay a just and reasonable price for the water;

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

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

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

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

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

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

(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.

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

(V.A.C.S. art. 7560, 7561, 7562) (V.T.C.A. Water Code § 5.041, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Added by Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139), § 1 (renumbered from sec. 5.041)); Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.005 (amended subsecs. (a) & (g)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.06 (amended subsec. (f)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 6(amended subsec. (f)).)

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## **SUBCHAPTER D. PERMITS TO USE STATE WATER**

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### **Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS.**

(a) The commission shall require from an applicant for a new or amended water right the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures, as defined by Subdivision (8)(B), Section 11.002, of this code.

(b) The commission shall require the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses, to develop, submit, and implement a water conservation plan, consistent with the appropriate approved regional

water plan, that adopts reasonable water conservation measures as defined by Subdivision (8)(B), Section 11.002, of this code. The requirement for a water conservation plan under this section shall not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(c) Beginning May 1, 2005, all water conservation plans required under this section must include specific, quantified 5-year and 10-year targets for water savings. The entity preparing the plan shall establish the targets. Targets must include goals for water loss programs and goals for municipal use in gallons per capita per day.

(d) The commission and the board jointly shall identify quantified target goals for water conservation that water suppliers and other entities may use as guidelines in preparing water conservation plans. Goals established under this subsection are not enforceable requirements.

(e) The commission and board jointly shall develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

(f) The commission shall adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) At a minimum, rules adopted under Subsection (f)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

(Added by Acts 1985, 69th Leg., R.S., ch. 133 (HB 2), § 1.08.) (Amended by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 1.03; Acts 2003, 78th Leg., R.S., ch. 688, § 1 (amended subsec. (c) and added subsecs. (d), (e), & (f)); Acts 2011, 82nd Leg., R.S., ch. 1233 (SB 660), § 5 (amended subsec. (f) and added subsec. (g)).)

**Sec. 11.1272. ADDITIONAL REQUIREMENT: DROUGHT CONTINGENCY PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS.**

(a) The commission shall by rule require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought.

(b) The wholesale and retail public water suppliers and irrigation districts shall provide an opportunity for public input during preparation of their drought contingency plans and before submission of the plans to the commission.

(c) By May 1, 2005, a drought contingency plan required by commission rule adopted under this section must include specific, quantified targets for water use reductions to be achieved during periods of water shortages and drought. The entity preparing the plan shall establish the targets.

(d) The commission and the board by joint rule shall identify quantified target goals for drought contingency plans that wholesale and retail public water suppliers, irrigation districts, and other entities may use as guidelines in preparing drought contingency plans. Goals established under this subsection are not enforceable requirements.

(e) The commission and the board jointly shall develop model drought contingency programs for different types of water suppliers that suggest best management practices for accomplishing the highest

practicable levels of water use reductions achievable during periods of water shortages and drought for each specific type of water supplier.

(Added by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 1.03.) (Amended by Acts 2003, 78th Leg., R.S., ch. 690, § 1 (added subsecs. (c), (d), & (e)).)

**Sec. 11.1273. ADDITIONAL REQUIREMENT: REVIEW OF AMENDMENTS TO CERTAIN WATER MANAGEMENT PLANS.**

(a) This section applies only to a water management plan consisting of a reservoir operation plan for the operation of two water supply reservoirs that was originally required by a court order adjudicating the water rights for those reservoirs.

(b) Not later than the first anniversary of the date the executive director determines that an application to amend a water management plan is administratively complete, the executive director shall complete a technical review of the plan.

(c) If the executive director submits a written request for additional information to the applicant, the applicant shall submit the requested information to the executive director not later than the 30th day after the date the applicant receives the request or not later than the deadline agreed to by the executive director and the applicant, if applicable. The review period required by Subsection (b) for completing the technical review is tolled until the date the executive director receives the requested information from the applicant.

(d) The commission shall provide an opportunity for public comment and a public hearing on the application, consistent with the process for other water rights applications.

(e) If the commission receives a request for a hearing before the period for submitting public comments and requesting a hearing expires, the commission shall act on the request for a hearing and, if the request is denied, act on the application not later than the 60th day after the date the period expires. If a request for a hearing is not submitted before the period expires, the executive director may act on the application.

(Added by Acts 2011, 82nd Leg., R.S., ch. 1021 (HB 2694), § 5.04.)

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## **CHAPTER 12. PROVISIONS GENERALLY APPLICABLE TO WATER RIGHTS**

(Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139) revised title 2 by moving former chapter 6, Water Rights Commission, to chapter 11 and renumbering some sections.

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 12.001. DEFINITIONS.**

The definitions contained in Subchapter A, Chapter 11 of this code apply to this chapter.

(Added by Acts 1977, 65th Leg., R.S., p. 2207, ch. 870, § 1.)

### **SUBCHAPTER B. GENERAL POWERS AND DUTIES RELATING TO WATER RIGHTS**

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#### **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, "political subdivision" 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.

(V.A.C.S. art. 7563) (V.T.C.A. Water Code § 6.056, Acts 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1.) (Amended by Acts 1977, 65th Leg., R.S., ch. 870 (SB 1139), § 1 (renumbered from sec. 6.056); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.07 (amended subsecs. (a) to (f) and repealed subsecs. (g) & (h)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 7 (amended subsecs. (a) to (f) and repealed subsecs. (g) & (h).)

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# CHAPTER 13. WATER RATES AND SERVICES

## SUBCHAPTER A. GENERAL PROVISIONS

### Sec. 13.001. LEGISLATIVE POLICY AND PURPOSE.

(a) This chapter is adopted to protect the public interest inherent in the rates and services of retail public utilities.

(b) The legislature finds that:

- (1) retail public utilities are by definition monopolies in the areas they serve;
- (2) the normal forces of competition that operate to regulate prices in a free enterprise society do not operate for the reason stated in Subdivision (1) of this subsection; and
- (3) retail public utility rates, operations, and services are regulated by public agencies, with the objective that this regulation will operate as a substitute for competition.

(c) The purpose of this chapter is to establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 1 (amended subsecs. (a), (b), & (c)).)

### Sec. 13.002. DEFINITIONS.

In this chapter:

(1) "Affected person" means any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(1-a) "Landowner," "owner of a tract of land," and "owners of each tract of land" include multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(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.

(3) "Allocations" means, for all retail public utilities, the division of plant, revenues, expenses, taxes and reserves between municipalities or between municipalities and unincorporated areas, where those items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(4) "Board" means the Texas Water Development Board.

(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.

(5) "Commission" means the Texas Commission on Environmental Quality.

(6) "Commissioner" means a member of the commission.

(7) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships but does not include municipal corporations unless expressly provided in this chapter.

(8) "Executive director" means the executive director of the commission.

(9) "Facilities" means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(10) "Incident of tenancy" means water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(11) "Member" means a person who holds a membership in a water supply or sewer service corporation and is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(12) "Municipality" means cities existing, created, or organized under the general, home-rule, or special laws of this state.

(13) "Municipally owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(14) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and rate setting.

(15) "Person" includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations

(16) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this chapter and includes the denial of relief or the dismissal of a complaint.

(17) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected whether directly or indirectly by any retail public utility for any service, product, or commodity described in Subdivision (23) of this section and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(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.

(19) "Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(20) "Retail water or sewer utility service" means potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(21) "Service" means any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(22) "Test year" means the most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

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

(23) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(24) "Water supply or sewer service corporation" means a nonprofit corporation organized and operating under Chapter 67 that provides potable water service or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.

(25) "Wholesale water or sewer service" means potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

(26) "Affected county" is a county to which Subchapter B, Chapter 232, Local Government Code, applies.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), §§ 1, 2 (amended subd. (18) and added subd. (21)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 2 (renumbered all subds. and as renumbered amended subds. (1), (3), (9), (11), (17), (22), (23), & (24) and added subds. (10), (19), (20), & (25)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 1 (amended subd. (11)); Acts 1991, 72nd Leg., R.S., 1st C.S., ch. 3 (SB 2), § 1.058 (amended subds. (5) & (8)); Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 1 (amended subds. (11) & (24)); Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 6 (amended subd. (23) and added subd. (26)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.02 (amended subds. (11), (21), and (24)); Acts 1999, 76th Leg., R.S., ch. 62 (SB 1368), § 18.52 (amended subd. (24)); Acts 1999, 76th Leg., R.S., ch. 404 (SB 1421), § 29 (amended subd. (26)); Acts 2005, 79th Leg., R.S., ch. 1145, § 1 (amended subd. (1) and added subd. (1-a)); Acts 2007, 80th Leg., R.S., ch. 1430, § 2.05 (amended subds. (1-a), (5) & (8)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subds. (2), (18), & (22) and added subds. (4-a), (4-b), (4-c), and (22-a)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subds. (2), (18), & (22) and added subds. (4-a), (4-b), (4-c), and (22-a)).)

### **Sec. 13.003. APPLICABILITY OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT.**

Chapter 2001, Government Code applies to all proceedings under this chapter except to the extent inconsistent with this chapter.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 5.95(49).)

### **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.

(Added by Acts 2005, 79th Leg., R.S., ch. 1057, § 1.01.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsecs. (a) & (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsecs. (a) & (b)).)

## **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

### **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, from the utility commission or commission, as appropriate, and the governing body of the respective agency, 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, 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;

(4) preparation of recommendations that the utility commission or commission, as appropriate, 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;

(6) protection and representation of the public interest before the utility commission or commission, as appropriate; 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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsecs. (a) & (b) and subds. (a)(1) to (a)(7)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsecs. (a) & (b) and subds. (a)(1) to (a)(7)).)

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10.)

### **Sec. 13.015. INFORMAL PROCEEDING.**

A proceeding involving a retail public utility as defined by Section 13.002 of this code may be an informal proceeding, except that the proceeding is subject to the public notice requirements of this chapter and the rules and orders of the regulatory authority involved.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 3; Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 3.)

**Sec. 13.016. RECORD OF PROCEEDINGS; RIGHT TO HEARING.**

A record shall be kept of all proceedings before the regulatory authority, unless all parties waive the keeping of the record, and all the parties are entitled to be heard in person or by attorney.

(Added by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 4.)

**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.

(Added by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.12; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 12.)

## SUBCHAPTER C. JURISDICTION

### **Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION; RULES; HEARINGS.**

(a) The utility commission may regulate and supervise the business of each 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 may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers 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 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) In accordance with Subchapter K-1, 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) 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) is not a rate and is not reviewable by the utility commission under Section 13.043. The commission has the authority to enforce payment and collection of the regulatory assessment.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 5 (added subsec. (d)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 4 (amended subsec. (d)); Acts 1991, 72nd Leg., R.S., 1st C.S., ch. 3 (SB 2), § 4.02; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.13 (amended subsecs. (a) to (g) and added subsec. (c-1)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 13



(amended subsecs. (a) to (g) and added subsec. (c-1)); Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 3 (amended subsec. (d)).)

**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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 6 (repealed former subsecs. (b) & (c) and relettered former subsecs. (d) & (e) as (b) & (c), and added new subsec. (d)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 5 (added new subsecs. (b) & (c) and relettered former subsecs. (b), (c) & (d) as (d), (e), & (f)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsecs. (b) to (f)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsecs. (b) to (f)).)

**Sec. 13.0421. RATES CHARGED BY CERTAIN MUNICIPALLY OWNED UTILITIES.**

(a) This section applies to a municipally owned water and sewer utility that on January 1, 1989, required some or all of its wholesale customers to assess a surcharge for service against residential customers who reside outside the municipality's municipal boundaries.

(b) A municipality may not require a municipal utility district to assess a surcharge against users of water or sewer service prior to the annexation of the municipal utility district.

(Added by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 8.)

**Sec. 13.043. APPELLATE JURISDICTION.**

(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.

(b-1) A municipally owned utility shall:

(1) disclose to any person, on request, the number of ratepayers who reside outside the corporate limits of the municipality; and

(2) provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(b-2) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Section 182.052, Utilities Code, the municipally owned utility may not disclose the address of the ratepayer under Subsection (b-1)(2).

(b-3) The municipally owned utility may not charge a fee for disclosing the information under Subsection (b-1)(1). The municipally owned utility may charge a reasonable fee for providing information under Subsection (b-1)(2). The municipally owned utility shall provide information requested under Subsection (b-1)(1) by telephone or in writing as preferred by the person making the request.

(c) An appeal under Subsection (b) 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), 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).

(d) In an appeal under Subsection (b) of this section, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(e) In an appeal under Subsection (b), 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 or by the appellant under Subsection (a), (b), or (f), establish interim rates to be in effect until a final decision is made.

(i) The governing body of a municipally owned utility or a political subdivision, within 60 days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

(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.

(k) Not later than the 30th day after the date of a final decision on a rate change, the commissioners court of an affected county shall provide written notice to each ratepayer eligible to appeal. The notice must include the effective date of the new rates, the new rates, and the location where additional information on rates may be obtained.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 7 (deleted existing language and added subsections (a) to (g)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 6 (amended subsections (a), (c), (d), (e), (f), & (g) and added subsections (h) to (j)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 2 (amended subsection (c)); Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 2 (amended subsection (b)); Acts 1993, 73rd Leg., R.S., ch. 549 (HB 2199), § 1 (amended subsection (j)); Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 2 (amended subsection (g)); Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 7 (amended subsections (b), (c), (f), & (g) and added subsection (k)); Acts 1999, 76th Leg., R.S., ch. 62 (SB 1368), § 18.53 (amended subsection (b)(1)); Acts 2011, 82nd Leg., R.S., ch. 1021, § 9.01; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsections (a), (b), (c), (e), (f), (g), (h), & (j)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsections (a), (b), (c), (e), (f), (g), (h), & (j)); Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 4 (added subsections (b-1) to (b-3)).)

#### **Sec. 13.0435. [Expired]**

(Added by Acts 1991, 72nd Leg., R.S., ch. 306 (SB 325), § 3.) (Amended by Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.284.)

#### **Sec. 13.044. RATES CHARGED BY MUNICIPALITY TO DISTRICT.**

(a) This section applies to rates charged by a municipality for water or sewer service to a district created pursuant to Article XVI, Section 59, of the Texas Constitution, or to the residents of such district, which district is located within the corporate limits or the extraterritorial jurisdiction of the municipality and the resolution, ordinance, or agreement of the municipality consenting to the creation of the district requires the district to purchase water or sewer service from the municipality.

(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.

(Added by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 7.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsection (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsection (b)).)

#### **Sec. 13.045. NOTIFICATION REGARDING USE OF REVENUE.**

At least annually and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure not water or sewer related funded in whole or in part by customer revenue.

(Added by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.28.)

**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.

(Added by Acts 2007, 80th Leg., R.S., ch. 599, § 1.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsecs. (a) to (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsecs. (a) to (c)).)

## **SUBCHAPTER D. MUNICIPALITIES AND COUNTIES**

(Heading of subchapter D amended by Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 8.)

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10.)

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 9 (amended subsecs. (b) & (d)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsecs. (a) to (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsecs. (a) to (e)).)

### **Sec. 13.083. RATE DETERMINATION.**

A municipality regulating its water and sewer utilities under this chapter shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for this determination shall be based on the procedures and requirements of this chapter, and the municipality shall retain any personnel necessary to make the determination of reasonable rates required under this chapter.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

**Sec. 13.084. AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT.**

The governing body of any municipality or the commissioners court of an affected county shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body or the commissioners court for the reasonable costs of those services and shall be allowed to recover those expenses through its rates with interest during the period of recovery.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 10; Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 9.)

**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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 10; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10.)

**Sec. 13.086. FAIR WHOLESALE RATES FOR WHOLESALE WATER SALES TO A WATER DISTRICT.**

(a) A municipality that makes a wholesale sale of water to a special district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and that operates under Title 4 or under Chapter 36 shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

(b) This section does not apply to a sale of water under a contract executed before the effective date of this section.

(Added by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.29.)

**Sec. 13.087. MUNICIPAL RATES FOR CERTAIN RECREATIONAL VEHICLE PARKS.**

(a) In this section:

(1) "Nonsubmetered master metered utility service" means potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) "Recreational vehicle" includes a:

(A) "house trailer" as that term is defined by Section 501.002, Transportation Code; and

(B) "towable recreational vehicle" as that term is defined by Section 541.201, Transportation Code.

(3) "Recreational vehicle park" means a commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to

determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.

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

(Added by Acts 2005, 79th Leg., R.S., ch. 523, § 1.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.10 (amended subsec. (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 10 (amended subsec. (c)).)



## **SUBCHAPTER E. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES**

### **Sec. 13.131. RECORDS OF UTILITY; RATES, METHODS, AND ACCOUNTS.**

(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.

(d) Every utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. A profit or loss may not be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by a utility to the extent that the merchandise is not integral to the provision of utility service.

(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.

(f) In determining the allocation of tax savings derived from application of methods such as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion those benefits between consumers and the utilities accordingly. If any portion of the investment tax credit has been retained by a utility, that amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

(g) Repealed by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 32, eff. Sept. 1, 1987.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 32; Acts 2009, 81st Leg., R.S., ch. 1242 (SB 2306), § 1 (amended subsec. (c)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.22 (amended subsecs. (a), (b), (c), & (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 22 (amended subsecs. (a), (b), (c), & (e)).)

**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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.23 (amended subsec. (a), subd. (a)(1), and subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1023 (amended subsec. (a), subd. (a)(1), and subsec. (b)).)

**Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION.**

On request, the utility commission shall provide, at a reasonable cost, electronic copies of or Internet access to all information provided to the utility commission under Sections 13.016 and 13.043 and Subchapter F to the extent that the information is available and is not confidential. Copies of all information provided to the utility commission shall be provided to the Office of Public Utility Counsel, on request, at no cost to the office.

(Added by Acts 2011, 82nd Leg., R.S., R.S., ch. 1021, § 7.01.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.24; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 24.)

**Sec. 13.133. INSPECTIONS; EXAMINATION UNDER OATH; COMPELLING PRODUCTION OF RECORDS; INQUIRY INTO MANAGEMENT AND AFFAIRS.**

(a) Any regulatory authority and, when authorized by the regulatory authority, its counsel, agents, and employees may, at reasonable times and for reasonable purposes, inspect and obtain copies of the papers, books, accounts, documents, and other business records and inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath or may authorize the person conducting the investigation to examine under oath any officer, agent, or employee of any utility in connection with the investigation.

(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 so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

(c) A member, agent, or employee of the regulatory authority may enter the premises occupied by a utility to make inspections, examinations, and tests and to exercise any authority provided by this chapter.

(d) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(e) The utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before beginning an inspection, examination, or test.

(f) The regulatory authority may inquire into the management and affairs of all utilities and shall keep itself informed as to the manner and method in which they are conducted and may obtain all information to enable it to perform management audits. The utility shall report to the regulatory authority on the status of the implementation of the recommendations of the audit and shall file subsequent reports at the times the regulatory authority considers appropriate.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 11 (amended subsec. (f)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.25 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1025 (amended subsec. (b)).)

#### **Sec. 13.134. REPORT OF ADVERTISING OR PUBLIC RELATIONS EXPENSES.**

(a) The regulatory authority may require an annual report from each utility company of all its expenditures for business gifts and entertainment and institutional, consumption-inducing, and other advertising or public relations expenses.

(b) The regulatory authority shall not allow as costs or expenses for ratemaking purposes any of the expenditures that the regulatory authority determines not to be in the public interest. The cost of legislative advocacy expenses shall not in any case be allowed as costs or expenses for ratemaking purposes.

(c) Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

#### **Sec. 13.135. UNLAWFUL RATES, RULES, AND REGULATIONS.**

A utility may not charge, collect, or receive any rate for utility service or impose any rule or regulation other than as provided in this chapter.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

#### **Sec. 13.136. FILING TARIFFS OF RATES, RULES, AND REGULATIONS; ANNUAL FINANCIAL REPORT.**

(a) Every utility shall file with each regulatory authority tariffs showing all rates that are subject to the original or appellate jurisdiction of the regulatory authority and that are in force at the time for any utility service, product, or commodity offered. Every utility 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.

(b) The utility commission by rule shall require each utility to annually file a service, 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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 8 (amended subsec. (a) and added subsec. (b)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 12 (amended subsecs. (a) & (b) and added subsec. (c)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 3 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.26 (amended subsecs. (b) & (c) and added subsec. (b-1)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 26 (amended subsecs. (b) & (c) and added subsec. (b-1)).)

**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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 13; Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 10.01 (relettered sec. as subsec. (a)(2) and subsec. (b) as subsec. (c) and added subd. (a)(1) and subsec. (c)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.27 (amended subd. (a)(2) and subsecs. (b) & (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1027 (amended subd. (a)(2) and subsecs. (b) & (c)).)

**Sec. 13.138. COMMUNICATIONS BY UTILITIES WITH REGULATORY AUTHORITY;  
REGULATIONS AND RECORDS.**

The regulatory authority may prescribe regulations governing communications by utilities and their affiliates and their representatives with the regulatory authority or any member or employee of the regulatory authority.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005). (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 14 (repealed subsec. (b) and relettered former subsec. (a) as sec..))

**Sec. 13.139. STANDARDS OF SERVICE.**

(a) Every retail public utility that possesses or is required to possess a certificate of public convenience and necessity and every district and affected county that furnishes retail water or sewer utility service, shall furnish the service, instrumentalities, and facilities as are safe, adequate, efficient, and reasonable.

(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.

(c) Any standards, classifications, regulations, or practices observed or followed by any utility may be filed by it with the regulatory authority and shall continue in force until amended by the utility or until changed by the regulatory authority in accordance with this section.

(d) Not later than the 90th day after the date on which a retail public utility that has a certificate of public convenience and necessity reaches 85 percent of its capacity, as compared to the commission's minimum capacity requirements for a public drinking water system, the retail public utility shall submit to the executive director a planning report that includes details on how the retail public utility will provide the expected service to the remaining areas within the boundaries of its certificated area. The executive director may waive the reporting requirement if the executive director finds that the projected growth of the area will not require the utility to exceed its capacity. The commission by rule may require the submission of revised reports at specified intervals.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 15 (amended subsecs. (a) & (b)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 4 (added subsec. (d)); Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.285 (amended subsec. (d)); Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 3 (amended subsec. (d)); Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 11 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.28 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1028 (amended subsec. (b)).)

**Sec. 13.1395. STANDARDS OF EMERGENCY OPERATIONS.**

(a) In this section:

(1) "Affected utility" means a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) in a county with a population of 3.3 million or more; or

(B) in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more.

(2) "Emergency operations" means the operation of a water system during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(3) "Extended power outage" means a power outage lasting for more than 24 hours.

(b) An affected utility shall:

(1) ensure the emergency operation of its water system during an extended power outage as soon as safe and practicable following the occurrence of a natural disaster; and

(2) adopt and submit to the commission for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

(c) The commission shall review an emergency preparedness plan submitted under Subsection (b). If the commission determines that the plan is not acceptable, the commission shall recommend changes to the plan. The commission must make its recommendations on or before the 90th day after the commission receives the plan. In accordance with commission rules, an emergency preparedness plan shall provide for one of the following:

(1) the maintenance of automatically starting auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) for existing facilities, the maintenance of direct engine or right angle drives; or

(8) any other alternative determined by the commission to be acceptable.

(d) Each affected utility that supplies, provides, or conveys surface water shall include in its emergency preparedness plan under Subsection (b) provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(e) The commission shall adopt rules to implement this section as an alternative to any rule requiring elevated storage.

(f) The commission shall provide an affected utility with access to the commission's financial, managerial, and technical contractors to assist the utility in complying with the applicable emergency preparedness plan submission deadline.

(g) The commission by rule shall create an emergency preparedness plan template for use by an affected utility when submitting a plan under this section. The emergency preparedness plan template shall contain:

(1) a list and explanation of the preparations an affected utility may make under Subsection (c) for the commission to approve the utility's emergency preparedness plan; and

(2) a list of all commission rules and standards pertaining to emergency preparedness plans.

(h) An emergency generator used as part of an approved emergency preparedness plan under Subsection (c) must be operated and maintained according to the manufacturer's specifications.

(i) The commission shall inspect each utility to ensure that the utility complies with the approved plan.

(j) The commission may grant a waiver of the requirements of this section to an affected utility if the commission determines that compliance with this section will cause a significant financial burden on customers of the affected utility.

(k) An affected utility may adopt and enforce limitations on water use while the utility is providing emergency operations.

(l) Except as specifically required by this section, information provided by an affected utility under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

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

(Added by Acts 2009, 81st Leg., R.S., ch. 1349 (SB 361), § 1.) (Amended by Acts 2011, 82nd Leg., R.S., ch. 723 (HB 805), § 1 (amended subd. (a)(1)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.29 (added subsec. (m)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 29 (added subsec. (m)).)

### **Sec. 13.1396. COORDINATION OF EMERGENCY OPERATIONS.**

(a) In this section:

(1) "Affected utility" has the meaning assigned by Section 13.1395.

(2) Repealed by Acts 2011, 82nd Leg., R.S., ch. 539, § 2, eff. June 17, 2011.

(3) "Electric utility" means the electric transmission and distribution utility providing electric service to the water and wastewater facilities of an affected utility.

(4) "Retail electric provider" has the meaning assigned by Section 31.002, Utilities Code.

(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, 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 utility 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, 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.

(d) An affected utility shall:

(1) annually submit the information required by Subsection (c) to each electric utility that provides transmission and distribution service to the affected utility and to each retail electric provider that sells electric power to the affected utility; and

(2) immediately update the information provided under Subsection (c) as changes to the information occur.

(e) Each affected utility shall submit annually to each electric utility that provides transmission and distribution service to the affected utility and to each retail electric provider that sells electric power to the affected utility any forms reasonably required by an electric utility or retail electric provider for determining critical load status, including a critical care eligibility determination form or similar form.

(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.

(g) If an electric utility determines that an affected utility's facilities do not qualify for critical load status, the electric utility and the retail electric provider, not later than the 30th day after the date the electric utility or retail electric provider receives the information required by Subsections (c) and (d), shall provide a detailed explanation of the electric utility's determination to the affected utility and the office of emergency management of each county in which the affected utility's facilities are located.

(Added by Acts 2009, 81st Leg., R.S., ch. 1349 (SB 361), § 1.) (Amended by: Acts 2011, 82nd Leg., R.S., ch. 539 (HB 2619), §§ 1- 2 (amended subsecs. (b), (c), (d), (e) & (g) and repealed subd (a)(2)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.30 (amended subsecs. (b), (c), & (f)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1030 (amended subsecs. (b), (c), & (f)).)

#### **Sec. 13.140. EXAMINATION AND TEST OF EQUIPMENT.**

(a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of service of any utility and may enter any premises occupied by any utility for the purpose of making the examinations and tests and exercising any power provided for in this chapter and may set up and use on those premises any apparatus and appliances necessary for those purposes. The utility may be represented at the making of the examinations, tests, and inspections.

(b) The utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for those duties.

(c) Any consumer or user may have a meter or measuring device tested by the utility once without charge after a reasonable period to be fixed by the regulatory authority by rule and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing of those meters and other measuring devices on the request of the consumer.

(d) If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last test of the same meter or other measuring device, the fee to be paid by



the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

**Sec. 13.141. BILLING FOR SERVICE TO STATE.**

A utility, utility owned by an affected county, or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is rendered.

(Added by Acts 1993, 73rd Leg., R.S., ch. 660 (SB 83), § 7.) (Amended by Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 12.)

**Sec. 13.142. TIME OF PAYMENT OF UTILITY BILLS BY STATE.**

(a) In this section, "utility" includes a municipally owned utility.

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

(c) This Act does not prohibit a utility from entering into an agreement with the state or a state agency to establish a levelized or average monthly service billing plan. The agreement must require reconciliation of the levelized or equalized bills quarterly.

(Added by Acts 1993, 73rd Leg., R.S., ch. 660 (SB 83), § 7.) (Amended by Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 5.95(7) (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.31 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1031 (amended subsec. (b)).)

**Sec. 13.143. VOLUNTARY CONTRIBUTIONS.**

(a) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution, including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service.

(b) A utility that collects contributions under this section shall provide each customer at the time that the customer first becomes a customer, and at least annually thereafter, a written statement:

(1) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(2) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(3) informing the customer that a contribution is voluntary; and

(4) describing the deductibility status of the contribution under federal income tax law.

(c) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it may be deducted from the billed amount.

(d) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(1) the utility's expenses in administering the contribution program; or

(2) five percent of the amount collected as contributions.

(e) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility-related fees and are not required to be shown in tariffs filed with the regulatory authority.

(Added by Acts 1997, 75th Leg., R.S., ch. 409 (HB 1406), § 1.)

**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.

(Added by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 5.13.) (Renumbered from § 13.143 by Acts 1999, 76th Leg., R.S., ch. 62 (SB 1368), § 19.01(110).) (Amended by Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 10.02; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.32; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1032.)

**Sec. 13.145. MULTIPLE SYSTEMS CONSOLIDATED UNDER TARIFF.**

(a) A utility may consolidate more than one system under a single tariff only if:

(1) the systems under the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(b) This section does not apply to a public utility that provided utility service in only 24 counties on January 1, 2003.

(Added by Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 10.03.) (Amended by: Acts 2005, 79th Leg., R.S., ch. 871, § 2 (designated sec. as subsec. (a) and added subsec. (b)).)

**Sec. 13.146. WATER CONSERVATION PLAN.**

The commission shall require a retail public utility that provides potable water service to 3,300 or more connections to submit to the executive administrator of the board a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies.

(Added by Acts 2007, 80th Leg., R.S., ch. 1352, § 6; Acts 2007, 80th Leg., R.S., ch. 1430, § 2.06.)

**Sec. 13.147. CONSOLIDATED BILLING AND COLLECTION CONTRACTS.**

(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.

(b) A contract or order under this section must provide procedures and deadlines for submitting billing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(c) A contract or order under this section may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(1) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(2) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(d) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

(Added by Acts 2007, 80th Leg., R.S., ch. 1430, § 2.06.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.33 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1033 (amended subsec. (b)).)

## **SUBCHAPTER F. PROCEEDINGS BEFORE REGULATORY AUTHORITY**

### **Sec. 13.181. POWER TO ENSURE COMPLIANCE; RATE REGULATION.**

(a) Except for the provisions of Section 13.192, this subchapter shall apply only to a utility and shall not be applied to municipalities, counties, districts, or water supply or sewer service corporations.

(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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 16 (amended sec.); Acts 1993, 73rd Leg., R.S., ch. 652 (HB 2677), § 1; Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 13; Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.03 (added subsec. (a) and lettered existing sec. as subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.34 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1034 (amended subsec. (b)).)

### **Sec. 13.182. JUST AND REASONABLE RATES.**

(a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

(b) Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 10.04 (relettered sec. as subsecs. (a), (b), & (c) and added subsec. (d)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.35 (amended subsecs (c) & (d)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1035 (amended subsecs (c) & (d)).)

### **Sec. 13.183. FIXING OVERALL REVENUES.**

(a) In fixing the rates for water and sewer services, the regulatory authority shall fix its overall revenues at a level that will:

- (1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses; and
- (2) preserve the financial integrity of the utility.

(b) In a rate proceeding, the regulatory authority may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service if an accurate accounting of the collection and use of

those funds is provided to the regulatory authority. A facility constructed with surcharge funds is considered customer contributed capital or contributions in aid of construction and may not be included in invested capital, and depreciation expense is not allowed.

(c) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority, by rule or ordinance, as appropriate, may adopt specific alternative ratemaking methodologies for water or sewer rates based on factors other than rate of return and those specified in Section 13.185. Overall revenues determined according to an alternative ratemaking methodology adopted under this section must provide revenues to the utility that satisfy the requirements of Subsection (a). The regulatory authority may not approve rates under an alternative ratemaking methodology unless the regulatory authority adopts the methodology before the date the rate application was administratively complete.

(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.

(e) In determining to use an alternative ratemaking methodology, the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 9 (relettered part of existing sec. as subd. (1) and added subd. (2)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 17 (relettered existing sec. as subsec. (a) and added subsec. (b)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.04 (added subsec. (c)); Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 10.05 (amended subsec (c) and added subsecs (d) & (e)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.36 (amended subsec. (d)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1036 (amended subsec. (d)).)

#### **Sec. 13.184. FAIR RETURN; BURDEN OF PROOF.**

(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.

(b) In fixing a reasonable return on invested capital, the regulatory authority shall consider, in addition to other applicable factors, the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management.

(c) In any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.05 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.37 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1037 (amended subsec. (a)).)

**Sec. 13.185. COMPONENTS OF INVESTED CAPITAL AND NET INCOME.**

(a) Unless alternate methodologies are adopted as provided in Sections 13.183(c) and 13.184(a), the components of invested capital and net income shall be determined according to the rules stated in this section.

(b) Utility rates shall be based on the original cost of property used by and useful to the utility in providing service, including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the books of the utility. The inclusion of construction work in progress is an exceptional form of rate relief to be granted only on the demonstration by the utility by clear and convincing evidence that the inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress may not be included in the rate base for major projects under construction to the extent that those projects have been inefficiently or imprudently planned or managed. Original cost is the actual money cost or the actual money value of any consideration paid, other than money, of the property at the time it shall have been dedicated to public use, whether by the utility that is the present owner or by a predecessor, less depreciation. Utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in invested capital.

(c) Cost of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(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.

(e) Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense may not be allowed either as capital cost or as expense except to the extent that the regulatory authority finds that payment to be reasonable and necessary. A finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(f) If the utility is a member of an affiliated group that is eligible to file a consolidated income tax return and if it is advantageous to the utility to do so, income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a utility is a member due to the elimination in the consolidated return of the intercompany profit on purchases by the utility from an affiliate shall be applied to reduce the cost of those purchases. The investment tax credit allowed against federal income taxes to the extent retained by the utility shall be applied as a reduction in the rate-based contribution of the assets to which the credit applies to the extent and at the rate as allowed by the Internal Revenue Code.

(g) The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

(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; 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.

(i) Water and sewer utility property in service that was acquired from an affiliate or developer before September 1, 1976, and that is included by the utility in its rate base shall be included in all ratemaking formulas at the installed cost of the property rather than the price set between the entities. Unless the funds for this property are provided by explicit customer agreements, the property is considered invested capital and not contributions in aid of construction or customer-contributed capital.

(j) Depreciation expense included in the cost of service includes depreciation on all currently used, depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property shall be allowed in the cost of service.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 10 (added subsec. (i)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 18 (amended subsec. (b) and added subsec. (j)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.06 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.38 (amended subsecs. (d) & (h)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 1038 (amended subsecs. (d) & (h)).)

**Sec. 13.186. UNREASONABLE OR VIOLATIVE EXISTING RATES; INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE.**

(a) If the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any utility for any service are unreasonable or in any way in violation of any law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be observed and in force, and shall fix the same by order to be served on the utility. Those rates constitute the legal rates of the utility until changed as provided in this chapter.

(b) If a utility does not itself produce that which it distributes, transmits, or furnishes to the public for compensation, but obtains it from another source, the regulatory authority may investigate the cost of that production in any investigation of the reasonableness of the rates of the utility.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 19 (amended subsec. (b)).)

**Sec. 13.1861. RATES CHARGED STATE.**

The rates that a utility or municipally owned utility charges the state or a state agency or institution may not include an amount representing a gross receipts assessment, regulatory assessment, or other similar expense. A regulatory authority may adopt reasonable rules specifying similar expenses to be excluded.

(Added by Acts 1993, 73rd Leg., R.S., ch. 660 (SB 83), § 8.)

**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 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 intervene in the ratemaking proceeding.

(b) The utility shall mail, send by e-mail, or deliver a copy of the statement of intent to the Office of Public Utility Counsel, appropriate offices of each affected municipality, and 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 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 (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).

(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. 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.

(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.



(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. 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.

(g) A local regulatory authority 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 commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to 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.

(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 in excess of the rate finally ordered; and
- (2) interest on those sums at the current interest rate as determined by the regulatory authority.

(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, 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.

(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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 11 (repealed existing subsecs. (a) to (g) and added new subsecs. (a) to (d)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 20 (amended subsec. (a), (b), (c), & (d)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 5 (amended subsec. (c)); Acts 1991, 72nd Leg., R.S., 1st C.S., ch. 3 (SB 2), § 4.03; Acts 1993, 73rd Leg., R.S., ch. 402 (HB 1153), § 1 (amended subsec. (b)); Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 4; Acts 2001, 77th Leg., R.S., ch. 965 (HB 2912), § 3.10; Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 10.06 (relettered subsec. (a) as subsecs. (a), (b), (c), & (d), relettered subsec. (b) as subsecs (e), (f), (g), & (h), relettered subsec. (c) as subsecs. (i), (j), (l), (m), & (o), and relettered subsec. (d) as subsec. (p), and added subds. (a)(2) & (a)(3) and subsecs. (k) & (n), and as relttereded amended subsecs. (a), (e) & (o)); Acts 2005, 79th Leg., R.S., ch. 1106, § 1 (amended subsecs. (c), (d), & (k) and added subsec. (d-1)); Acts 2011, 82nd Leg., R.S., ch. 1021 (HB 2694), § 9.02; Acts 2011, 82nd Leg., R.S., ch. 1163 (HB 2702), § 180 (amended subsec. (f)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.39 (amended subsec. (a), (b), (c), (d), (d-1), (e), (f), (g), (i), (j), (k), (l), & (o), relettered part of former subsec. (a) as new subsec. (a-1), and added new subd. (a-1)(4) and new subsecs. (e-1) & (g-1)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 39 (amended subsec. (a), (b), (c), (d), (d-1), (e), (f), (g), (i), (j), (k), (l), & (o), relettered part of former subsec. (a) as new subsec. (a-1), and added new subd. (a-1)(4) and new subsecs. (e-1) & (g-1)); Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 5 (amended subsec. (g-1)).)

**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 265 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 265-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) 265 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 commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority

to give reasonable notice for 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 266th 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.

(Added by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.40; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 40.) (Amended by Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 6 (amended subsecs. (g), (h), (j), (m), &

(p)); Acts 2015, 84th Leg., R.S., ch. 1236 (SB 1296), § 18.001 (repealed subsec. (s) as added by Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 40.)

**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.

(Added by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.40; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 40.)

**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 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 determines that there is substantial public interest in the matter.

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

(Added by Acts 2007, 80th Leg., R.S., ch. 1430, § 2.07.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.41 (amended subsecs. (a), (b), & (c) and subd. (b)(2)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 41 (amended subsecs. (a), (b), & (c) and subd. (b)(2)).)

**Note: A previous sec.13.188 was repealed by Acts 1989, 71st Leg., R.S., ch. 568 (HB 1808), § 45.**

**Sec. 13.189. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES.**

(a) A water and sewer utility as to rates or services may not make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage.

(b) A utility may not establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

**Sec. 13.190. EQUALITY OF RATES AND SERVICES.**

(a) A water and sewer utility may not directly or indirectly by any device or in any manner charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable to that service when filed in the manner provided in this chapter, and a person may not knowingly receive or accept any service from a utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a utility on the effective date of this chapter may be continued until schedules are filed.

(b) This chapter does not prevent a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

**Sec. 13.191. DISCRIMINATION; RESTRICTION ON COMPETITION.**

A water and sewer utility may not discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, and a utility may not engage in any other practice that tends to restrict or impair that competition.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

**Sec. 13.192. PAYMENTS IN LIEU OF TAXES.**

Payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may not be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the utility is owned.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

## **SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY**

### **Sec. 13.241. GRANTING CERTIFICATES.**

(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.

(b) For water utility service, the commission shall ensure that the applicant:

(1) is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and requirements of this code; and

(2) has access to an adequate supply of water.

(c) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants and the requirements of this code.

(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.

(Added by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.07.) (Amended by Acts 1999, 76th Leg., R.S., ch. 404 (SB 1421), § 30 (added subsec. (e)); Acts 2005, 79th Leg., R.S., ch. 1145, § 2 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.42 (amended subsecs. (a), (d), & (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 442 (amended subsecs. (a), (d), & (e)).)

Note: Former sec. 13.241 was added by Acts 1985, 69th Leg., R.S., ch. 795, § 3.005, was amended by Acts 1987, 70th Leg., R.S., § 12, and was repealed by Acts 1989, 71st Leg., R.S., ch. 567 § 45(a); see now § 13.002(19), (23).

### **Sec. 13.242. CERTIFICATE REQUIRED.**

(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.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to Subsection (c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated area of a retail public utility without first obtaining written consent from the retail public utility. A person that violates this section or the reasonable and legal terms and conditions of any written consent is subject to the administrative penalties described by Section 13.4151 of this code.

(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.

(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 13; Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 21 (relettered existing sec. as subsec. (a) and added subsecs. (b) & (c)); Acts 1993, 73rd Leg., R.S., ch. 652 (HB 2677), § 2 (amended subsecs. (a), (b), & (c)); Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 14 (amended subsec. (a)); Acts 2005, 79th Leg., R.S., ch. 1145, § 3 (added subsec. (d)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.43 (amended subsecs. (a) & (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 443 (amended subsecs. (a) & (c)).)

### **Sec. 13.243. EXCEPTIONS FOR EXTENSION OF SERVICE.**

A retail public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one-quarter mile of the boundary of the certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 14 (amended subsec. (a) and subd. (a)(1)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 22 (relettered subsec. (a) as sec. and repealed (subd. (a)(3) and subsec. (b)).)

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 23 (amended subsecs. (a), (b), & (c)); Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.286 (amended subsec. (c)); Acts 2005, 79th Leg., R.S., ch. 1145, § 4 (amended subsecs. (a), (b), & (c) and added subsec (d)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.44 (amended subsecs. (a), (b), (c) and subd. (d)(8)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 444 (amended subsecs. (a), (b), (c) and subd. (d)(8)).)

**Sec. 13.245. MUNICIPAL BOUNDARIES OR EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES.**

(a) This section applies only to a municipality with a population of 500,000 or more.

(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.

(c-4) Subsections (c-1), (c-2), and (c-3) do not apply to:

- (1) a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county;
- (2) a county with a population of more than 30,000 and less than 35,000 that borders the Red River; or
- (3) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (2).

(c-5) Subsections (c-1), (c-2), and (c-3) do not apply to:

- (1) a county with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or
- (2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(d) A commitment described by Subsection (c)(2) must provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(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.

(Added by Acts 2005, 79th Leg., R.S., ch. 1145, § 5.) (Amended by Acts 2011, 82nd Leg., R.S., ch. 1325 (SB 573), § 1 (amended subsec. (b) and added subsecs. (c-1) to (c-5); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.45 (amended subsecs. (b), (c), (c-1), (c-2), (c-3) & (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 445 (amended subsecs. (b), (c), (c-1), (c-2), (c-3) & (e)).)

**Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL JURISDICTION.**

(a) Except as provided by Subsection (b), if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(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.

(b-1) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(b-2) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

- (1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or
- (2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

(b-3) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

- (1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or
- (2) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(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.

(d) To the extent of a conflict between this section and Section 13.245, Section 13.245 prevails.

(Added by Acts 2005, 79th Leg., R.S., ch. 1145, § 5.) (Amended by Acts 2007, 80th Leg., R.S., ch. 1430, § 2.08 (amended subsecs. (a) & (b) and added subsecs (c) & (d)); Acts 2011, 82nd Leg., R.S., ch. 1325 (SB 573), § 2; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.46 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 446 (amended subsec. (b)).)

**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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 15 (amended subsecs. (a), (b), & (c)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 24 (amended subsec. (c)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 6 (amended subsec. (c)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.08 (amended subsec. (a) and added subsecs. (d) and (e)); Acts 1999, 76th Leg., R.S., ch. 404 (SB 1421), § 31 (amended subsec. (e) and added subsecs. (f) & (g)); Acts 2005, 79th Leg., R.S., ch. 1145, § 6 (amended subsecs. (a), (b), (c), & (d) and added subsecs. (a-1), (h), & (i)); Acts 2007, 80th Leg., R.S., ch. 1430, § 2.09 (amended subsec. (a-1)); Acts 2009, 81st Leg., R.S., ch. 363 (HB 1295), § 1 (amended subsec. (a)); Acts 2011, 82nd Leg., R.S., ch. 1325 (SB 573), § 3; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.47 (amended subsecs (a), (a-1), (b), (c), (d), (e), (f), & (h)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 447 (amended subsecs (a), (a-1), (b), (c), (d), (e), (f), & (h)).)

**Note: § 15.001 defines economically distressed area as "(A) an area in which water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; or (B) for purposes of any federal funds for colonias deposited in the water assistance fund, an area that meets the federal criteria for use of such funds."**

#### **Sec. 13.247. AREA WITHIN MUNICIPALITY.**

(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 13.2465 or 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.

(b) Notwithstanding any other provision of law, a retail public utility may continue and extend service within its area of public convenience and necessity and utilize the roads, streets, highways, alleys, and public property to furnish retail utility service, subject to the authority of the governing body of a municipality to require any retail public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets, by giving to the retail public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

(d) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, "substandard water or sewer system" means a system that is not in compliance with the municipality's standards for water and wastewater service.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 25 (amended subsections (a) & (b)); Acts 2005, 79th Leg., R.S., ch. 1145, § 7 (amended heading); Acts 2005, 79th Leg., R.S., ch. 1145, § 8 (amended subsections (a) & (b) and added subsection (d)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.48 (amended subsection (a)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 448 (amended subsection (a)); Acts 2015, 84th Leg., R.S., ch. 673 (SB 789), § 1 (amended subsection (a)).)

**Sec. 13.2475. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE SEWER SERVICE IN CERTAIN MUNICIPALITIES.**

(a) This section applies only to a municipality:

- (1) with a population of more than 95,000;
- (2) located in a county that:
  - (A) borders Lake Palestine; and
  - (B) has a population of more than 200,000;
- (3) that owns and operates a utility that provides sewer service; and
- (4) that has an area within the boundaries of the municipality that is certificated to another retail public utility that provides sewer service.

(b) A municipality may provide sewer service to an area entirely within the municipality's boundaries without first having to obtain from the utility commission a certificate of public convenience and necessity that includes the area to be served, regardless of whether the area to be served is certificated to another retail public utility.

(c) Not less than 30 days before the municipality begins providing sewer service to an area certificated to another retail public utility, the municipality shall provide notice to the retail public utility and the utility commission of its intention to provide service to the area.

(d) On receipt of the notice required by Subsection (c), a retail public utility may:

- (1) petition the utility commission to decertify its certificate for the area to be served by the municipality; or
- (2) discontinue service to the area to be served by the municipality, provided that there is no interruption of service to any customer.

(e) This section may not be construed to limit the right of a retail public utility to provide service in an area certificated to the retail public utility.

(f) This section does not expand a municipality's power of eminent domain under Chapter 21, Property Code.

(Added by Acts 2015, 84th Leg., R.S., ch. 673 (SB 789), § 2.)

**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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 26; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.49; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 449.)

**Sec. 13.250. CONTINUOUS AND ADEQUATE SERVICE; DISCONTINUANCE, REDUCTION, OR IMPAIRMENT OF SERVICE.**

(a) Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(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.

(d) Except as provided by this subsection, a retail public utility that has not been granted a certificate of public convenience and necessity may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without approval of the regulatory authority. Except as provided by this subsection, a utility or water supply corporation that is allowed to operate without a certificate of public convenience and necessity under Section 13.242(c) may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without the approval of the regulatory authority. Subject to rules of the regulatory authority, a retail public utility, utility, or water supply corporation described in this subsection may discontinue, reduce, or impair retail water or sewer service for:

- (1) nonpayment of charges;

- (2) nonuse; or
- (3) other similar reasons in the usual course of business.

(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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 16 (added subsec. (d)); Acts 1987, 70th Leg., R.S., ch. 1102 (SB 408), § 5 (amended subsec. (a)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 27 (amended subsecs. (a) & (d)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 7 (amended subsec. (b) and added subsec. (e)); Acts 1993, 73rd Leg., R.S., ch. 652 (HB 2677), § 3 (amended subsec. (d)); Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 5 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.50 (amended subsecs. (b), (c), & (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 450 (amended subsecs. (b), (c), & (e)).)

### **Sec. 13.2501. CONDITIONS REQUIRING REFUSAL OF SERVICE.**

The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047, Local Government Code.

(Added by Acts 1987, 70th Leg., R.S., ch. 1102 (SB 408), § 6.) (Amended by Acts 1989, 71st Leg., R.S., ch. 1 (SB 220), § 46(f); Acts 1989, 71st Leg., R.S., ch. 624 (SB 2), § 3.13.)

### **Sec. 13.2502. SERVICE EXTENSIONS BY WATER SUPPLY AND SEWER SERVICE CORPORATION OR SPECIAL UTILITY DISTRICT.**

(a) Notwithstanding Section 13.250, a water supply or sewer service corporation or a special utility district organized under Chapter 65 is not required to extend retail water or sewer utility service within the certificated area of the corporation or special utility district to a service applicant in a subdivision if the corporation or special utility district documents that:

(1) the developer of the subdivision has failed to comply with the subdivision service extension policy of the corporation or special utility district as set forth in the tariff of the corporation or the policies of the special utility district; and

(2) the service applicant purchased the property after the corporation or special utility district gave notice as provided by this section of the rules of the corporation or special utility district applicable to service to subdivisions from the corporation or special utility district.

(b) Publication of notice in a newspaper of general circulation in each county in which the corporation or special utility district is certificated for utility service of the requirement to comply with the subdivision service extension policy constitutes notice under this section. The notice must be published once a week for two consecutive weeks on a biennial basis and must contain information describing the subdivision service extension policy of the corporation or special utility district. The corporation or special utility district must be able to provide proof of publication through an affidavit of the publisher of the newspaper that specifies each county in which the newspaper is generally circulated.

(c) As an alternative to publication of notice as provided by Subsection (b), a corporation or special utility district may demonstrate by any reasonable means that a developer has been notified for purposes of this section, including:

- (1) an agreement executed by the developer;
- (2) correspondence with the developer that sets forth the subdivision service extension policy; or
- (3) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.



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

(e) For purposes of this section:

(1) "Developer" means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.

(2) "Service applicant" means a person, other than a developer, who applies for retail water or sewer utility service.

(Added by Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 6.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.51 (amended subsec. (d)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 451 (amended subsec. (d)).)

#### **Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.**

Except as provided by Section 13.255, 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). The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 17; Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 28; Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 8; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.52; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 452.)

#### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 18; Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 29; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.53; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 453.)

#### **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 at a 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 at a 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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 19 (amended subd. (1)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 30 (amended subd. (2) and added subd. (3)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.09 (relettered existing sec. as subsec. (a), amended subd. (a)(1) and added subds. (a)(1)(A) and (a)(1)(B), added subd (a)(3), and added subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.54 (amended subsecs. (a) & (b) and subd. (a)(1)(B)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 454 (amended subsecs. (a) & (b) and subd. (a)(1)(B)).)

#### **Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE.**

(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 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-5) As an alternative to decertification under Subsection (a) and expedited release under Subsection (a-1), the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.

(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-7) The utility shall include with the statement of intent provided to each landowner or ratepayer a notice of:

- (1) a proceeding under this section related to certification or decertification;
- (2) the reason or reasons for the proposed rate change; and
- (3) any bill payment assistance program available to low-income ratepayers.

(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.

(a-9) Subsection (a-8) does not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to a county that borders the United Mexican States and the Gulf of Mexico.

(a-10) Subsection (a-8) does not apply to a county:

- (1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or
- (2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

(a-11) Subsection (a-8) does not apply to a county:

- (1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or
- (2) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(b) Upon written request from the certificate holder, the utility commission 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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 20 (amended subsec. (a)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 31 (amended subd. (a)); Acts 1993, 73rd Leg., R.S., ch. 652 (HB 2677), § 4 (relettered subsec. (b) as subsec. (c) and added new subsec. (b)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.10 (relettered part of existing subsec. (a) as subd. (a)(1), added subds. (a)(2) to (a)(4), amended subsec. (c), and added subsecs. (d) to (h)); Acts 2005, 79th Leg., R.S., ch. 1145 (HB 1145), § 9 (amended subsecs. (a), (e), & (g) and added subsecs (a-1) to (a-4) & (g-1)); Acts 2005, 79th Leg., R.S., ch. 1145 (HB 1145), § 13(1) (repealed subsec. (h)); Acts 2011, 82nd Leg., R.S., ch. 1325 (SB 573), § 4; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.55 (amended subsecs. (a), (a-1), (a-2), (a-3), (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), & (h)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 455 (amended subsecs. (a), (a-1), (a-2), (a-3), (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), & (h)).)

### **Sec. 13.2541. [Repealed]**

(Added by Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 9.901.) (Repealed by Acts 2005, 79th Leg., R.S., ch. 1145 (HB 1145), § 13(2).)

### **Sec. 13.255. SINGLE CERTIFICATION IN INCORPORATED OR ANNEXED AREAS.**

(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). 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) 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.

(f) Transfer of property shall be effective on the date the judgment becomes final. However, after the judgment of the court is entered, the municipality or franchised utility may take possession of condemned property pending appeal if the municipality or franchised utility pays the retail public utility

or pays into the registry of the court, subject to withdrawal by the retail public utility, the amount, if any, established in the court's judgment as just and adequate compensation. To provide security in the event an appellate court, or the trial court in a new trial or on remand, awards compensation in excess of the original award, the municipality or franchised utility, as the case may be, shall deposit in the registry of the court an additional sum in the amount of the award, or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages in excess of the original award of the trial court. On application by the municipality or franchised utility, the court shall order that funds deposited in the registry of the court be deposited in an interest-bearing account, and that interest accruing prior to withdrawal of the award by the retail public utility be paid to the municipality or to the franchised utility. In the event the municipally owned utility or franchised utility takes possession of property or provides utility service in the singly certificated area pending appeal, and a court in a final judgment in an appeal under this section holds that the grant of single certification was in error, the retail public utility is entitled to seek compensation for any damages sustained by it in accordance with Subsection (g) of this section.

(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; 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, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, 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 outside the incorporated or annexed area 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 single certification, the impact on future revenues lost from existing customers, necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

(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.

(h) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right pursuant to Subsection (f) of this section.

(i) In the event that a municipality files an application for single certification on behalf of a franchised utility, the municipality shall be joined in such application by such franchised utility, and the franchised utility shall make all payments required in the court's judgment to adequately and justly compensate the retail public utility for any taking or damaging of property and for the transfer of property to such franchised utility.

(j) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under Chapter 65, Water Code, or a fresh water supply district under Chapter 53, Water Code; or



(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

(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.

(Added by Acts 1987, 70th Leg., R.S., ch. 583 (HB 2035), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 32 (amended subsecs. (c) & (d)); Acts 1989, 71st Leg., R.S., ch. 926 (SB 1067), § 1 (amended subsec. (j) and added subsec. (k)); Acts 1995, 74th Leg., R.S., ch. 814 (HB 1935), § 1 to 4 (amended subsec. (j) and added subsecs. (l) & (m) and amended subsec. (g)); Acts 1999, 76th Leg., R.S., ch. 1374 (HB 1291), § 1 (amended subd. (j)(1)); Acts 1999, 76th Leg., R.S., ch. 1375 (HB 1362), § 1 (amended subsec. (l)); Acts 2005, 79th Leg., R.S., ch. 1145, § 10 (amended subsec. (g) and added subsec (g-1)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.56 (amended subsecs. (a), (b), (c), (d), (e), (g-1), (k), (l), (m)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 456 (amended subsecs. (a), (b), (c), (d), (e), (g-1), (k), (l), (m)).)

### **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.

(Added by Acts 2005, 79th Leg., R.S., ch. 1145, § 11.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.57 (amended subsecs. (a), (b), (c), (d), & (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 457 (amended subsecs. (a), (b), (c), (d), & (e)).)

### **Sec. 13.256. COUNTY FEE.**

(a) Notwithstanding any other provision of law, a county with a population of more than 2.8 million may not charge a water and sewer utility a fee for the privilege of installing or replacing a water or sewer line in the county's right-of-way.

(b) This section does not affect a franchise agreement or other contract entered into before September 1, 1995.

(Added by Acts 1995, 74th Leg., R.S., ch. 628 (HB 1783), § 1.)

### **Sec. 13.257. NOTICE TO PURCHASERS.**

(a) In this section, "utility service provider" means a retail public utility other than a district subject to Section 49.452 of this code.

(b) If a person proposes to sell or convey real property located in a certificated service area of a utility service provider, the person must give to the purchaser written notice as prescribed by this section. An executory contract for the purchase and sale of real property that has a performance period of more than six months is considered a sale of real property under this section.

(c) This section does not apply to:

- (1) a transfer of title under any type of lien foreclosure;

- (2) a transfer of title by deed in cancellation of indebtedness secured by a lien on the property conveyed;
- (3) a transfer of title by reason of a will or probate proceeding;
- (4) a transfer of title to or from a governmental entity;
- (5) a transfer of title to property located within the corporate limits of a municipality that is served by a municipally owned utility;
- (6) a transfer of title to property that receives water or sewer service from a utility service provider on the date the property is transferred;
- (7) a transfer of title by a trustee in bankruptcy;
- (8) a transfer of title by a mortgagee or beneficiary under a deed of trust who acquired the property:
  - (A) at a sale conducted under a power of sale conferred by a deed of trust or other contract lien;
  - (B) at a sale under a court judgment foreclosing a lien; or
  - (C) by a deed in lieu of foreclosure;
- (9) a transfer of title from one co-owner to another co-owner;
- (10) a transfer of title between spouses or to a person in the lineal line of consanguinity of the transferor; or
- (11) a transfer of a mineral interest, leasehold interest, or security interest.

(d) The notice must be executed by the seller and read as follows: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of Purchaser

"Except for notices included as an addendum to or paragraph of a purchase contract, the notice must be executed by the seller and purchaser, as indicated."

(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.

(f) The purchaser shall sign the notice or the purchase and sale contract that includes the notice to evidence the purchaser's receipt of the notice.

(g) At the closing of the purchase and sale contract, a separate copy of the notice with current information shall be executed by the seller and purchaser, acknowledged, and subsequently recorded in the real property records of the county in which the property is located. In completing the notice to be executed by the seller and purchaser at the closing of the purchase and sale contract, any seller, title insurance company, real estate broker, or examining attorney, or any agent, representative, or person acting on behalf of the seller, company, broker, or attorney, may rely on the accuracy of the information required by this chapter that is last filed in the real property records by the utility service provider and the accuracy of the map of the certificated service area of the utility service provider. Any information taken from the map is, for purposes of this section, conclusively presumed to be correct as a matter of law. Any subsequent seller, purchaser, title insurance company, real estate broker, examining attorney, or lienholder may rely on the map of the certificated service area filed in the real property records by the utility service provider.

(h) In completing the notice required to be given to a prospective purchaser before the execution of a binding contract of purchase and sale, any seller, and any person completing the notice on behalf of the seller, may rely on the information contained in the map of the certificated service area filed in the real property records by the utility service provider. Any subsequent seller, purchaser, title insurance company, real estate broker, examining attorney, or lienholder may rely on the map of the certificated service area filed in the real property records by the utility service provider.

(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.

(j) Any purchaser who purchases real property in a certificated service area of a utility service provider and who subsequently sells or conveys the property is conclusively considered on the closing of the subsequent sale to have waived any previous right to damages under this section.

(k) It is the express intent of this section that any seller, title insurance company, examining attorney, vendor of property and tax information, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, attorney, vendor, broker, or lienholder, may rely for the purpose of completing the notice required by this section on the accuracy of the map of the certificated service area of the utility service provider filed in the real property records by the utility service provider.

(l) Except as otherwise provided by Subsection (e), if any sale or conveyance of real property within the certificated service area of a utility service provider fails to comply with this section, the purchaser may file a suit for damages under Subsection (m) or (n).

(m) If the sale or conveyance of real property fails to comply with this section, the purchaser may file a suit for damages in the amount of all costs related to the purchase of the property plus interest and reasonable attorney's fees. The suit for damages may be filed jointly or severally against the individual or entity that sold or conveyed the property to the purchaser. Following the recovery of damages under this subsection, the amount of the damages shall be paid first to satisfy all unpaid obligations on each outstanding lien on the property and the remainder of the damage amount shall be paid to the purchaser. On payment of all damages respectively to each lienholder and the purchaser, the purchaser shall reconvey the property to the seller.

(n) If the sale or conveyance of the property fails to comply with this section, the purchaser may file a suit for damages in an amount not to exceed \$5,000, plus reasonable attorney's fees.

(o) A purchaser may not recover damages under both Subsections (m) and (n). An entry of a final decision awarding damages to the purchaser under either Subsection (m) or (n) precludes the purchaser from recovering damages under the other subsection. Notwithstanding general or special law or the common law of this state to the contrary, the relief provided under Subsections (m) and (n) provides the exclusive remedy for a purchaser aggrieved by the seller's failure to comply with this section. Any action for damages under this section does not apply to, affect, alter, or impair the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(p) A suit for damages under this section must be filed by the earlier of:

(1) a date on or before the 90th day after the date the purchaser discovers:

(A) the cost the purchaser is required to pay to the utility service provider to obtain water or sewer service; or

(B) the period required by the utility service provider to provide water or sewer service; or

(2) the fourth anniversary of the date the property was sold or conveyed to the purchaser.

(q) Notwithstanding any other provision of this section to the contrary, a purchaser may not recover damages under this section if the person:

(1) purchases an equity interest in real property and, in conjunction with the purchase, assumes any liens, including a purchase money lien; and

(2) does not require proof of title by abstract, title insurance policy, or any other method.

(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 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.

(Added by Acts 2001, 77th Leg., R.S., ch. 1068, § 1.) (Amended by Acts 2005, 79th Leg., R.S., ch. 1145, § 12 (amended subsecs. (a), (b), & (c) and added subsecs (r) & (s)); Acts 2009, 81st Leg., R.S., ch. 1004 (HB 4043), § 1 (amended subsec. (c)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.58 (amended subsecs. (e), (i), (r), & (s)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 458 (amended subsecs. (e), (i), (r), & (s)).)

**Note: This section applies only to a transfer of property that occurs on or after September 1, 2001.**

## **SUBCHAPTER H. SALE OF PROPERTY AND MERGERS**

### **Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION.**

(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 owned by an entity that is required by law to possess a certificate of public convenience and necessity or the effective date of a sale or acquisition of or merger or consolidation with such an entity, shall:

- (1) file a written application with the utility commission; and
- (2) unless public notice is waived by the utility commission 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 shall notify all known parties to the transaction and the Office of Public Utility Counsel whether the utility commission will hold a public hearing to determine if the transaction will serve the public interest. The utility commission may hold 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 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 a public hearing, 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 notifies the utility or water supply or sewer service corporation that a hearing will not be held.

(g) If the utility commission decides to hold a hearing 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.

(h) A sale, acquisition, lease, or rental of any water or sewer system owned by an entity required by law to possess a certificate of public convenience and necessity, or a sale or acquisition of or merger or consolidation with such an entity, that is not completed in accordance with the provisions of this section is void.

(i) This section does not apply to:

- (1) the purchase of replacement property; or
- (2) a transaction under Section 13.255 of this code.

(j) If a public utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the public utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or its controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(k) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 21 (repealed existing subsecs. (a) to (e) and added new subsecs. (a) to (d)); Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 33 (amended subsecs. (a), (b), & (d) and added subsec. (e)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 9 (amended subsecs. (a), (c), (d), & (e) and added subsecs. (f) & (g)); Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 7 (amended subsec. (c)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.11; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.59 (amended subsecs. (a), (b), (c), (d), (e), (f), & (g)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 459 (amended subsecs. (a), (b), (c), (d), (e), (f), & (g)); Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 7 (amended subsecs. (a) & (h)).)

### **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 may hold a public hearing on the transaction if the utility commission believes that a criterion prescribed by Section 13.301(e) applies.

(e) Unless the utility commission holds a public hearing, 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 notifies the person or utility that a hearing will not be held.

(f) If the utility commission decides to hold a hearing 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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 34 (amended sec.); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 10 (relettered sec. as subsec. (a) and amended subsec. (a) and added subsecs. (b) & (c)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.12; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.60 (amended subsecs. (a), (b), (c), (d), (e), & (f) and subd (e)(2)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 460 (amended subsecs. (a), (b), (c), (d), (e), & (f) and subd (e)(2)).)

#### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 35; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.61; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 461.)

#### **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.

(Added by Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 11.) (Amended by Acts 1995, 74th Leg., R.S., ch. 400 (HB 2387), § 8 (relettered sec. as subsec. (a) and added subsecs (b) & (c)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.62 (amended subsecs. (a), (b), & (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 462 (amended subsecs. (a), (b), & (c)).)

## **SUBCHAPTER I. RELATIONS WITH AFFILIATED INTERESTS**

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.63; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 463.)

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.64; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 464.)

### **Sec. 13.343. WHOLESALE WATER CONTRACTS BETWEEN CERTAIN AFFILIATES.**

(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 determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

(b) The utility may not purchase groundwater from any provider if:

- (1) the source of the groundwater is located in a priority groundwater management area; and
- (2) a wholesale supply of surface water is available.

(Added by Acts 2001, 77th Leg., R.S., ch. 966 (SB 2), § 10.07.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.65 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 465 (amended subsec. (a)).)

## **SUBCHAPTER J. JUDICIAL REVIEW**

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.66; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 466.)

### **Sec. 13.382. COSTS AND ATTORNEY'S FEES.**

(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.

(b) On a finding by the court that an action under this subchapter was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant retail public utility reasonable attorney's fees.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 36 (amended subsec. (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.67 (amended subsec. (a)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 467 (amended subsec. (a)).)

## **SUBCHAPTER K. VIOLATIONS AND ENFORCEMENT**

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 37 (amended sec.); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.30; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.68 (amended subsecs. (a) & (b) and subd. (b)(2)(B)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 468 (amended subsecs. (a) & (b) and subd. (b)(2)(B)).)

### **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 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.

(Added by Acts 2001, 77th Leg., R.S., ch. 965 (HB 2912), § 20.01.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.69; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 469.)

### **Sec. 13.412. RECEIVERSHIP.**

(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.

(b) The court shall appoint a receiver if an appointment is necessary:

- (1) to guarantee the collection of assessments, fees, penalties, or interest;
- (2) to guarantee continuous and adequate service to the customers of the utility; or
- (3) to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(e) On a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

(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 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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 12 (amended subsec. (a)); Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.13; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.70 (amended subsecs. (a), (f), & (g)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 470 (amended subsecs. (a), (f), & (g)).)

### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.71 (amended subd. (3)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 471 (amended subd. (3)).)

#### **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, or noncompliance with an order issued under this chapter.

(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 approval from the utility commission before taking any action that may be restricted under Subsection (b). Any action or transaction which occurs without approval may be voided by the utility commission.

(Added by Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 13.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.72 (amended subsecs. (a), (b), & (c) and subd. (b)(4)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 472 (amended subsecs. (a), (b), & (c) and subd. (b)(4)).)

#### **Sec. 13.4132. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.**

(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.

(c) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

- (2) bill for utility services;
- (3) collect revenues;
- (4) disburse funds;
- (5) access all system components; and
- (6) request rate increases.

(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.

(Added by Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 13.) (Amended by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.14; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.73 (amended subsecs. (a), (b), & (d)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 473 (amended subsecs. (a), (b), & (d)).)

**Sec. 13.4133. EMERGENCY RATE INCREASE IN CERTAIN CIRCUMSTANCES.**

(a) Notwithstanding the requirements of Subchapter F, the utility commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 or for which a receiver has been appointed under Section 13.412 if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers. The commission and utility commission shall coordinate as needed to carry out this section.

(b) A utility that receives an emergency rate increase under this section shall provide to each ratepayer notice of the increase as soon as possible, but not later than the first utility bill issued at the new rate.

(c) An emergency order may be issued under this section for a term not to exceed 15 months. 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.

(Added by Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 13.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.74 (amended subsecs. (a) & (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 474 (amended subsecs. (a) & (c)); Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 8 (amended subsecs. (a) & (c)).)

**Sec. 13.414. PENALTY AGAINST RETAIL PUBLIC UTILITY OR AFFILIATED INTEREST.**

(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.

(b) A retail public utility or affiliated interest commits a separate violation each day it continues to violate Subsection (a) of this section.

(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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 38 (amended subsecs. (a) & (b)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 14 (amended subsec. (a) & (b)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.75 (amended subsecs. (a) & (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 75 (amended subsecs. (a) & (c)).)

**Sec. 13.415. PERSONAL PENALTY.**

Any person who wilfully and knowingly violates this chapter is guilty of a third degree felony.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

**Sec. 13.4151. ADMINISTRATIVE PENALTY.**

(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), and shall analyze each factor for the benefit of the appropriate agency.

(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 written consent to the 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) 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 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 shall call a hearing and give notice of the hearing. As a result of the hearing, the appropriate agency 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 shall analyze each of the factors provided by Subsection (b).

(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 finds that a violation has occurred and has assessed a penalty, that agency 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 order. If the utility commission or the commission is required to give notice of a penalty under this subsection or Subsection (f), the appropriate agency shall file notice of that agency's 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 the 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 for placement in an escrow account; or
  - (B) post with the appropriate agency a supersedeas bond in a form approved by the agency 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) 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), the appropriate agency 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.

(l) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(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.

(n) Payment of a penalty under this section is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.

(Added by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 22.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 39 (amended subsecs. (c) to (j)); Acts 1991, 72nd Leg., R.S., ch. 678 (HB 827), § 15 (amended subsecs. (a) to (j)); Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 5.95(49) (amended subsec. (g)), (53) (amended subsec. (k)), and (59) (amended subsec. (i)); Acts 2011, 82nd Leg., R.S., ch. 1021 (HB 2694), § 4.12 (amended subsec. (d) and subd (d)(4)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.76 (amended subsecs. (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), & (m)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 476 (amended subsecs. (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), & (m)).)

#### **Sec. 13.416. PENALTIES CUMULATIVE.**

All penalties accruing under this chapter are cumulative and a suit for the recovery of any penalty does not bar or affect the recovery of any other penalty or bar any criminal prosecution against any retail public utility or any officer, director, agent, or employee or any other corporation or person.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 40.)

#### **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.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 41; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.77; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 477.)

#### **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 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 deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.) (Amended by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.31; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.78 (amended subsecs. (a) & (b)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 478 (amended subsecs. (a) & (b)).)

#### **Sec. 13.419. VENUE.**

Suits for injunction or penalties under this chapter may be brought in Travis County, in any county where this violation is alleged to have occurred, or in the county or residence of any defendant.

(Added by Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 3.005.)

### **SUBCHAPTER K-1. EMERGENCY ORDERS**

#### **Sec. 13.451. ISSUANCE OF EMERGENCY ORDER.**

(a) The utility commission may issue an emergency order authorized under this chapter after providing the notice and opportunity for a hearing that the utility commission considers practicable under the circumstances or without notice or opportunity for a hearing. If the utility commission considers the

provision of notice and opportunity for a hearing practicable, the utility commission shall provide the notice not later than the 10th day before the date set for the hearing.

(b) The utility commission by order or rule may delegate to the utility commission's executive director the authority to:

- (1) receive applications and issue emergency orders under this subchapter; and
- (2) authorize, in writing, a representative or representatives to act on the utility commission's executive director's behalf under this subchapter.

(c) Chapter 2001, Government Code, does not apply to the issuance of an emergency order under this subchapter without a hearing.

(d) A law under which the utility commission acts that requires notice of hearing or that prescribes procedures for the issuance of emergency orders does not apply to a hearing on an emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. The utility commission shall give notice of the hearing as it determines is practicable under the circumstances.

(e) An emergency order issued under this subchapter does not vest any rights in a person affected by the order and the order expires according to its terms.

(f) The utility commission may adopt rules necessary to administer this subchapter.

(Added by Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 9.)

#### **Sec. 13.452. APPLICATION FOR EMERGENCY ORDER.**

A person other than the utility commission or the staff of the utility commission who desires the issuance of an emergency order under this subchapter must submit a sworn written application to the utility commission. The application must:

- (1) describe the emergency condition or other condition justifying the issuance of the order;
- (2) allege facts to support the findings required under this subchapter;
- (3) estimate the dates on which the proposed order should begin and end;
- (4) describe the action sought and the activity proposed to be allowed, mandated, or prohibited; and
- (5) include any other statement, including who must sign the application for the order, and any information required by the utility commission.

#### **(Added by Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 9.)Sec. 13.453. NOTICE OF ISSUANCE.**

Notice of the issuance of an emergency order must be provided as required by utility commission rule.

(Added by Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 9.)

#### **Sec. 13.454. HEARING TO AFFIRM, MODIFY, OR SET ASIDE ORDER.**

(a) If the utility commission or the utility commission's executive director issues an emergency order under this subchapter without a hearing, a hearing must be held to affirm, modify, or set aside the emergency order unless the person affected by the order waives the right to a hearing. If the person does not waive the right to a hearing, the utility commission or the utility commission's executive director shall set a time and place for a hearing to be held before the utility commission or the State Office of Administrative Hearings, which must be as soon as practicable after the order is issued.

(b) At a hearing required under Subsection (a), or within a reasonable time after the hearing, the utility commission shall affirm, modify, or set aside the emergency order.

(c) A hearing to affirm, modify, or set aside an emergency order must be conducted in accordance with Chapter 2001, Government Code, and utility commission rules. Utility commission rules relating to a hearing to affirm, modify, or set aside an emergency order must provide for presentation of evidence by the applicant, if any, under oath, presentation of rebuttal evidence under oath, and cross-examination of witnesses under oath.

(Added by Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 9.)

**Sec. 13.455. TERM OF ORDER.**

An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

(Added by Acts 2015, 84th Leg., R.S., ch. 853 (SB 1148), § 9.)

**Subchapter L. Commission Financing**

**Sec. 13.451. [Repealed]**

**Sec. 13.452. [Repealed]**

**Sec. 13.453. [Repealed]**

**Sec. 13.454. [Repealed]**

**Sec. 13.455. [Repealed]**

## **SUBCHAPTER M. SUBMETERING AND NONSUBMETERING FOR APARTMENTS AND MANUFACTURED HOME RENTAL COMMUNITIES AND OTHER MULTIPLE USE FACILITIES**

**Note:** This subchapter M consisting of §§ 13.501-.505 was added and former subchapter M, *Miscellaneous Provisions*, consisting of §§ 13.491-.494 was repealed by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26, 1987 Tex. Gen. Laws, 2161, 2170 without reference to the addition of subchapter N, *Privatization Contracts*, consisting of §§ 13.501–.503 by Acts 1987, 70th Leg., R.S., ch. 88 (SB 436), § 1, 1987 Tex. Gen. Laws, 197, those §§ 13.501–.503 added by ch. 88 being subsequently renumbered as §§ 13.511–.513 by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 44, 1989 Tex. Gen. Laws, 1883, 1900.

### **Sec. 13.501. DEFINITIONS.**

In this subchapter:

(1) "Apartment house" means one or more buildings containing five or more dwelling units which are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and having rental paid, if a dwelling unit is rented, at intervals of one month or longer.

(2) "Dwelling unit" means:

(A) one or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; or

(B) a manufactured home in a manufactured home rental community.

(3) "Customer" means the individual, firm, or corporation in whose name a master meter has been connected by the utility service provider.

(4) "Nonsubmetered master metered utility service" means water utility service that is master metered for the apartment house but not submetered, and wastewater utility service based on master metered water utility service.

(5) "Owner" means the legal titleholder of an apartment house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation that purports to be the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.

(6) "Tenant" means a person who is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(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.

(8) "Manufactured home rental community" means a property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

(Added by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 43 (amended subs. (1) & (2) and added subs. (3) to (8)); Acts 1999, 76th Leg., R.S., ch. 86 (SB 950), § 1 (amended heading and subs. (2)(B), (5), & (8)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.79 (amended subd. (7)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 479 (amended subd. (7)).)

**Sec. 13.502. SUBMETERING.**

(a) An apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may provide for submetering of each dwelling unit or rental unit for the measurement of the quantity of water, if any, consumed by the occupants of that unit.

(b) Except as provided by Subsections (c) and (d), a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction begins after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:

- (1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit;
- (2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.

(c) An owner of an apartment house on which construction begins after January 1, 2003, and which provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.

(d) On request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction begins after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.

(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 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.

(Added by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 43; Acts 1999, 76th Leg., R.S., ch. 86 (SB 950), § 1; Acts 2001, 77th Leg., R.S., ch. 873 (HB 2404), § 1 (relettered sec. as subsec. (a) and added subsecs. (b) to (e)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.80 (amended subsec. (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 480 (amended subsec. (e)).)

**Sec. 13.503. SUBMETERING RULES.**

(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.

(c) Except as provided by Subsection (c-1), in addition to the charges permitted under Subsection (b), the rules shall authorize the owner or manager of a manufactured home rental community or apartment house to impose a service charge of not more than nine percent of the costs related to submetering allocated to each submetered rental or dwelling unit.

(c-1) The rules may not authorize the owner or manager of an apartment house to impose a service charge under Subsection (c) on a resident who:

- (1) resides in a unit of an apartment house that has received an allocation of low income housing tax credits under Subchapter DD, Chapter 2306, Government Code; or
- (2) receives tenant-based voucher assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(d) For purposes of Subsection (c), "costs related to submetering" means water costs as well as any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager of a manufactured home rental community or apartment house.

(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.

(Added by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 43 (amended heading and sec.); Acts 1999, 76th Leg., R.S., ch. 86 (SB 950), § 1 (relettered sec. as subsec. (b) and amended subsec. (b) and added subsecs. (a), (c), & (d)); Acts 2003, 78th Leg., R.S., ch. 673, § 1 (amended subsecs. (a) & (b) and added subsec. (e)); Acts 2009, 81st Leg., R.S., ch. 151 (SB 2126), § 1 (amended subsec. (c) & (d) and added subsec. (c-1)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.81 (amended subsecs. (a), (b), & (e)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 481 (amended subsecs. (a), (b), & (e)).)

### **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.

(Added by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 43.) (Amended by Acts 1999, 76th Leg., R.S., ch. 86 (SB 950), § 1 (amended sec. and subds. (1), (2), (3), & (4)); Acts 2003, 78th Leg., R.S., ch. 673, § 2 (amended subd. (3) and added subd. (6)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.82 (amended sec.); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 482 (amended sec).)

#### **Sec. 13.504. IMPROPER RENTAL RATE INCREASE.**

If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house, manufactured home rental community, or other multiple use facility has increased rental rates and the increase is attributable to increased costs of utilities, the owner, operator, or manager shall immediately reduce the rental rate by the amount of the increase and refund all of the increase that has previously been collected within the 90-day period.

(Added by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26; Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 43; Acts 1999, 76th Leg., R.S., ch. 86 (SB 950), § 1.)

#### **Sec. 13.505. ENFORCEMENT.**

In addition to the enforcement provisions contained in Subchapter K, 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.

(Added by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26.) (Amended by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), § 26; Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 43; Acts 1999, 76th Leg., R.S., ch. 86 (SB 950), § 1; Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.83; 83rd Leg., R.S., ch. 171 (SB 567), § 83.)

#### **Sec. 13.506. PLUMBING FIXTURES.**

(a) After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager must:

(1) meet the standards prescribed by Section 372.002, Health and Safety Code, for sink or lavatory faucets, faucet aerators, and showerheads; and



(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found.

(b) Not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service under Subsection (a), the owner or manager shall:

(1) remove any toilets that exceed a maximum flow of 3.5 gallons of water per flushing; and

(2) install toilets that meet the standards prescribed by Section 372.002, Health and Safety Code.

(c) Subsections (a) and (b) do not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

(Added by Acts 2001, 77th Leg., R.S., ch. 873 (HB 2404), § 2.) (Amended by: Acts 2009, 81st Leg., R.S., ch. 1316 (HB 2667), § 5 (amended subsec. (b)).)

## SUBCHAPTER N. PRIVATIZATION CONTRACTS

**Note:** This subchapter N, *Privatization Contracts*, consisting of §§ 13.501-.503 was added by Acts 1987, 70th Leg., R.S., ch. 88 (SB 436), § 1, 1987 Tex. Gen. Laws, 197 without reference to the addition of subchapter M, *Submetering in Apartments and Mobile Home Parks*, consisting of §§ 13.501-.505 and subchapter N, *Central System Utilities*, consisting of §§ 13.511-.513 by Acts 1987, 70th Leg., R.S., ch. 539 (HB 1459), §§ 26, 27, 1987 Tex. Gen. Laws, 2161, 2170, 2171. Sections 13.501-.503 in this subchapter N, *Privatization Contracts*, added by ch. 539 were subsequently renumbered as §§ 13.511-.513 and former subchapter N, *Central System Utilities*, was repealed by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 45(b), 1989 Tex. Gen. Laws, 1883, 1900, 1901.

### Sec. 13.511. DEFINITIONS.

In this subchapter:

(1) "Eligible city" means any municipality whose waterworks and sewer system is operated by a board of utility trustees pursuant to provisions of a home-rule charter.

(2) "Privatization contract" means any contract, agreement, or letter of intent or group of the same by which any eligible city contracts with a service provider to provide for the financing, acquisition, improvement, or construction of sewage treatment and disposal facilities pursuant to which such service provider or its assignee or subcontractor will own, operate, and maintain such facilities and provide sewage treatment and disposal services to the eligible city or any contract pursuant to which such service provider agrees to operate and maintain, or have its subcontractor operate and maintain all or any part of the eligible city's sewage treatment and disposal facilities.

(3) "Service provider" means any person or group of persons who is a party to a privatization contract which thereby contracts to provide sewage treatment and disposal services to an eligible city.

(Added by Acts 1987, 70th Leg., R.S., ch. 88 (SB 436), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 44 (renumbered from § 13.501 and amended subd. (2)).)

### 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.

(Added by Acts 1987, 70th Leg., R.S., ch. 88 (SB 436), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 44 (renumbered from § 13.502); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.84; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 484.)

### 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 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 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 with respect to such other person or municipality.

(Added by Acts 1987, 70th Leg., R.S., ch. 88 (SB 436), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 44 (renumbered from § 13.503); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.85; Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 485.)

**Sec. 13.514. TERM AND PROVISIONS OF A PRIVATIZATION CONTRACT.**

A privatization contract may be for a term and contain provisions that the governing body of an eligible city determines are in the best interests of the eligible city, including provisions relating to allocation of liabilities, indemnification, and purchase of all or a portion of the facilities.

(Added by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 44.)

**Sec. 13.515. PAYMENTS UNDER A PRIVATIZATION CONTRACT.**

Payments by an eligible city under a privatization contract shall, if so provided, constitute an operating expense of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system, except that any payment for purchase of the facilities is payable from a pledge and lien on the net revenues of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system.

(Added by Acts 1989, 71st Leg., R.S., ch. 567 (HB 1808), § 44.)

## **TITLE 4. GENERAL LAW DISTRICTS**

### **CHAPTER 49. PROVISIONS APPLICABLE TO ALL DISTRICTS**

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#### **SUBCHAPTER L. FIRE DEPARTMENTS**

##### **Sec. 49.352. MUNICIPAL SYSTEM IN UNSERVED AREA.**

(a) This section applies only to a home-rule municipality that:

- (1) is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million; and
- (2) has within its boundaries a part of a district.

(b) If a district does not establish a fire department under this subchapter, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment.

(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 to grant single certification immediately after the municipality provides notice of intent to provide service as required by Section 13.255(b).

(Added by Acts 1997, 75th Leg., R.S., ch. 1010 (SB 1), § 6.33.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.86 (amended subsec. (c)); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 86 (amended subsec. (c)).)

## CHAPTER 65. SPECIAL UTILITY DISTRICTS

### SUBCHAPTER A. GENERAL PROVISIONS

#### Sec. 65.001. DEFINITIONS.

In this chapter:

- (1) "District" means a special utility district operating under this chapter.
- (2) "Board" means the board of directors of a district.
- (3) "Director" means a member of the board of directors of a district.
- (4) "Commission" means the Texas Natural Resource Conservation Commission.
- (5) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.
- (6) "Public agency" means any city, the United States and its agencies, the State of Texas and its agencies, and any district or authority created under Article XVI, Section 59, or Article III, Sections 52(b)(1) and (2), of the Texas Constitution.
- (7) "City" means any incorporated city or town.
- (8) "Extraterritorial jurisdiction" means the extraterritorial jurisdiction of a city as determined under Chapter 42, Local Government Code.
- (9) "Sole expense" means the actual cost of relocating, raising, lowering, rerouting, changing grade, or altering the construction to provide comparable replacement without enhancing the facility, after deducting the net salvage value derived from the old facility.
- (10) "Water supply or sewer service corporation" means any member-owned, member-controlled, nonprofit water supply or sewer service corporation created and operating under Chapter 67, that:
  - (A) provides water supply services to noncontiguous subdivisions in two or more counties, at least one of which counties has a population greater than 3.3 million or
  - (B) is providing the services of a water supply or sewer service corporation under a certificate of convenience and necessity issued by the commission or a predecessor agency.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1 (amended subd. (8)); Acts 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.153; Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 47; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.082 (amended subs. (4) & (5)); Acts 1997, 75th Leg., R.S., ch. 474 (HB 2851), § 1 (relettered part of subd (10) as (10)(B) and added subd. (10)(A)); Acts 1999, 76th Leg., R.S., ch. 62 (SB 1368), § 18.67; Acts 1999, 76th Leg., R.S., ch. 320 (HB 1069), § 1 (amended subs. (10) & (10)(B)); Acts 2001, 77th Leg., R.S., ch. 669 (HB 2810), § 150 (amended subd. (10)(A)).)

### SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

#### Sec. 65.011. CREATION OF DISTRICT.

A special utility district may be created under and subject to the authority, conditions, and restrictions of, and is considered a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.012. PURPOSES OF DISTRICT.**

A district may be created:

- (1) to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the transportation of water; and to sell water to towns, cities, and other political subdivisions of this state, to private business entities, and to individuals;
- (2) for the establishment, operation, and maintenance of fire-fighting facilities to perform all fire-fighting activities within the district; or
- (3) for the protection, preservation, and restoration of the purity and sanitary condition of water within the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 2003, 78th Leg., R.S., ch. 494, § 1.)

**Sec. 65.013. COMPOSITION OF DISTRICT.**

- (a) A district may include the area in all or part of any one or more counties including all or part of any cities and other public agencies.
- (b) The land composing a district is not required to be contiguous, but may consist of separate bodies of land separated by land that is not included in the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.014. CERTIFIED RESOLUTION SEEKING CREATION OF DISTRICT.**

- (a) If creation of a district is proposed by a water supply or sewer service corporation, a certified copy of a resolution requesting creation must be filed with the commission.
- (b) The resolution shall be signed by the president and secretary of the board of directors of a water supply or sewer service corporation and shall state that the water supply or sewer service corporation, acting through its board of directors, has found that it is necessary and desirable for the water supply or sewer service corporation to be converted into a district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 1999, 76th Leg., R.S., ch. 320 (HB 1069), § 2 (amended subsecs. (a) & (b)).)

**Sec. 65.015. CONTENTS OF RESOLUTION.**

In addition to the requirements stated in Section 65.014, the resolution shall:

- (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a registered professional engineer;
- (2) state the general nature of the services presently performed by the water supply or sewer service corporation, the general nature of the services proposed to be provided by the district, and the necessity for the services provided by the district;
- (3) include a name of the district that is generally descriptive of the location of the district followed by the words special utility district, but may not be the same name as any other district in the same county;

(4) include the names of not less than five and not more than 11 qualified persons to serve as the initial board of directors of the district; and

(5) specify each purpose for which the district is being established.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 1999, 76th Leg., R.S., ch. 320 (HB 1069), § 2 (amended sec. and subd. (2)); Acts 2003, 78th Leg., R.S., ch. 494, § 2 (added subd. 5).)

#### **Sec. 65.016. CONSENT OF CITY.**

A district may operate within the corporate limits of a city or within the extraterritorial jurisdiction of a city, provided that a city may require that the district construct all facilities to serve the land in accordance with plans and specifications that are approved by the city. The city may also require that the city be entitled to inspect facilities being constructed by a district within the corporate limits or extraterritorial jurisdiction of the city.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

#### **Sec. 65.018. NOTICE AND HEARING ON DISTRICT CREATION.**

If a resolution is filed under Section 65.014, the commission shall give notice of an application as required by Section 49.011 and may conduct a hearing on the application if the commission determines that a hearing is necessary under Section 49.011.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 1997, 75th Leg., R.S., ch. 1070 (SB 1865), § 40.)

#### **Sec. 65.020. HEARING.**

(a) If the commission determines that a hearing is necessary under Section 49.011, the commission shall conduct a hearing and accept evidence on the sufficiency of the resolution and whether or not the request for conversion for each purpose specified in the resolution, as required by Section 65.015, is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district. The commission may only consider a purpose for which the district is being created that is specified in the resolution.

(b) The commission has jurisdiction to determine all issues on the sufficiency of the resolution and the creation of the district.

(c) The hearing may be adjourned from day to day, and the commission may make all incidental orders necessary with respect to the matters before it.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 1997, 75th Leg., R.S., ch. 1070 (SB 1865), § 41 (amended subsec. (a)); Acts 2005, 79th Leg., R.S., ch. 1244 (HB 1673), § 1 (amended subsec. (a)).)

#### **Sec. 65.021. GRANTING OR REFUSING CREATION OF DISTRICT.**

(a) If the commission finds that the resolution conforms to the requirements of Section 65.015, the request for conversion is feasible and practicable, and each purpose for which the district is created is necessary and would be a benefit to the land proposed to be included in the district, the commission shall make these findings in an order and shall authorize the creation of the district for the purpose or purposes specified in the resolution, as required by Section 65.015, on approval at the confirmation and directors' election called and held under this subchapter.

(b) In determining if the request for conversion is feasible and practicable and if each purpose for which the district is created is necessary and would be a benefit to the land included in the district, the commission shall consider:

- (1) the availability of comparable service from other systems, including water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, if any, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
  - (A) land elevation;
  - (B) subsidence;
  - (C) groundwater level within the region;
  - (D) recharge capability of a groundwater source;
  - (E) natural runoff rates and drainage; and
  - (F) water quality.

(c) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall formally make this finding and shall exclude all land that is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(d) If the commission finds that the resolution does not conform to the requirements of Section 65.015 of this code, the request for conversion is not feasible or practicable, or a purpose for which the district is created is not necessary or a benefit to the land in the district, the commission shall make this finding in its order and shall deny the creation of the district.

(e) A copy of the order of the commission granting or denying the request for conversion stated in the resolution must be mailed to each city that has extraterritorial jurisdiction in a county in which the proposed district is located and that requested notice of hearing as provided by Section 65.019 of this code.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 1997, 75th Leg., R.S., ch. 1070 (SB 1865), § 42; Acts 2005, 79th Leg., R.S., ch. 1244 (HB 1673), § 2 (amended subsecs (a), (b), & (c)).)

#### **Sec. 65.022. TEMPORARY DIRECTORS.**

If the commission authorizes the creation of the district, it shall appoint those persons whose names are listed in the resolution filed with the commission by the water supply or sewer service corporation to serve as temporary directors until initial directors are elected as provided by this subchapter.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 1999, 76th Leg., R.S., ch. 320 (HB 1069), § 2.)

#### **Sec. 65.023. APPEAL FROM ORDER OF COMMISSION.**

A city or a person who appeared in person or by attorney and offered testimony for or against the creation of the district, may appeal from the order of the commission authorizing or refusing the creation of the district. The appeal must be made within 30 days after the entry of the order.



(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

## **SUBCHAPTER C. ADMINISTRATIVE PROVISIONS**

### **Sec. 65.101. BOARD OF DIRECTORS.**

A district is governed by a board of not less than five and not more than 11 directors.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

### **Sec. 65.102. QUALIFICATIONS FOR DIRECTORS.**

To be qualified to serve as a director, a person must be:

- (1) at least 18 years old;
- (2) a resident citizen of this state; and
- (3) either own land subject to taxation in the district, be a user of the facilities of the district, or be a qualified voter of the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

### **Sec. 65.103. ELECTION OF DIRECTORS; TERMS OF OFFICE.**

(a) The persons receiving the highest number of votes at each election shall serve as directors of the district.

(b) The terms of the directors may run concurrently, or may be staggered, but in any event, the term of office of a director may not exceed three years.

(c) The method for determining the initial terms for each of the directors constituting the initial board shall be determined by the temporary directors, and the terms must be clearly stated on the ballot for the confirmation and directors' election.

(d) Notwithstanding Sections 41.001 and 41.003, Election Code, the board may hold an election to elect directors on any date determined by the board. The terms of directors must be stated on the ballot.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1; Acts 1995, 74th Leg., R.S., ch. 715 (SB 626), § 35 (repealed subsecs. (d) & (e)); Acts 1997, 75th Leg., R.S., ch. 1070 (SB 1865), § 43 (amended subsec. (c) and added subsec. (d)).)

## **SUBCHAPTER D. GENERAL POWERS AND DUTIES**

### **Sec. 65.201. POWERS.**

(a) A district has the functions, powers, authority, and rights that will permit accomplishment of the purposes for which it is created.

(b) A district may purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes for which it was created, including works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

- (1) supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls;

- (2) collect, transport, process, dispose of, store, and control domestic, industrial, or communal wastes whether in fluid, solid, or composite state;
- (3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in the district;
- (4) irrigate the land in a district;
- (5) alter land elevation in a district where it is needed; and
- (6) provide fire-fighting services for the inhabitants of the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.203. SOLID WASTE.**

A district may collect solid waste and may purchase, construct, acquire, own, operate, maintain, repair, improve, and extend a solid waste collection and disposal system inside and outside the district and may make proper charges for its facilities or services provided by the system.

(Added by Acts 1983, 68th Leg., R.S., ch. 435, § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.205. ADOPTING RULES.**

A district may adopt and enforce reasonable rules to:

- (1) secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of its sanitary sewer system;
- (2) preserve the purity and the sanitary condition of all water controlled by the district;
- (3) prevent waste or the unauthorized use of water controlled by the district;
- (4) regulate privileges on any land or easement owned or controlled by the district;
- (5) provide and regulate a safe and adequate freshwater distribution system; and
- (6) ensure adequate safeguards in the performance of the district's fire-fighting activities.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.206. EFFECT OF RULES.**

After the required publication, rules adopted by the district under Section 65.205 of this code shall be recognized by the courts as if they were penal ordinances of a city.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.207. PUBLICATION OF RULES.**

(a) The board shall publish a substantive statement of each rule and the penalty for its violation once a week for two consecutive weeks in one or more newspapers with general circulation in the area in which the district is located.

(b) The substantive statement shall be condensed as far as possible to intelligently explain the purpose to be accomplished or the act forbidden by each rule.

(c) The notice must advise that breach of a rule will subject the violator to a penalty and that the full text of each rule is on file in the principal office of the district at which it may be read by any interested person.

(d) Any number of rules may be included in one notice.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.208. EFFECTIVE DATE OF RULES.**

The penalty for violation of a rule is not effective and enforceable until five days after the last publication of the notice. Five days after the last publication, the published rule takes effect and ignorance of the rule is not a defense to a prosecution for the enforcement of the penalty.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.235. PROHIBITION ON ASSESSMENT OR COLLECTION OF TAXES.**

Section 49.107 does not apply to a district created under this chapter.

(Added by Acts 1995, 74th Leg., R.S., ch. 715 (SB 626), § 36.)

**SUBCHAPTER G. ISSUANCE OF BONDS AND NOTES**

**Sec. 65.501. ISSUANCE OF BONDS AND NOTES.**

The district may issue its bonds or notes for the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes listed in Section 65.012 of this code, including works, improvements, facilities, plants, equipment, and appliances needed to provide a waterworks system, sanitary sewer system, storm sewer system, solid waste disposal system, or to provide for solid waste collection or fire-fighting services and facilities.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.502. FORM OF BONDS AND NOTES.**

(a) A district may issue its bonds or notes in various series or issues.

(b) Bonds or notes shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state. The board shall determine the maturity and the interest rate of the bonds and notes.

(c) A district's bonds, notes, and interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest. The board may make the bonds redeemable before maturity, at the option of the district, or may include in the bonds a mandatory redemption provision.

(d) A district's bonds or notes may be issued in the form, denominations, and manner and under the terms, conditions, and details, and must be signed and executed, as provided by the board in the resolution or order authorizing the issuance of the bonds or notes.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.503. MANNER OF REPAYMENT OF BONDS OR NOTES.**

The board may provide for the payment of principal of and interest and redemption price, if any, on the bonds or notes by pledging all or any part of the designated revenues to result from the ownership or operation of the district's works, improvements, facilities, plants, equipment, and appliances or under specific contracts for the period of time the board determines.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.504. ADDITIONAL SECURITY FOR BONDS OR NOTES.**

(a) The bonds or notes, within the discretion of the board, may be additionally secured by a deed of trust or mortgage lien on all or part of the physical properties of the district, and franchises, easements, water rights, and appropriation permits, leases, and contracts and all rights appurtenant to those properties, vesting in the trustee power to sell the property for payment of the indebtedness, power to operate the property, and all other authority necessary for the further security of the bonds or notes.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on any property, may:

(1) include provisions prescribed by the board for the security of the bonds or notes and the preservation of the trust estate;

(2) make provision for amendment or modification;

(3) condition the right to spend district money or sell district property on approval of a registered professional engineer selected as provided in the trust indenture; and

(4) make provision for investment of funds of the district.

(c) Any purchaser under a sale under the deed of trust or mortgage lien, if one is given, is absolute owner of the property, facilities, and rights purchased and is entitled to maintain and operate them.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.505. METHOD FOR ISSUANCE OF BONDS AND NOTES.**

Bonds or notes may be issued by resolution or order of the board.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.506. PROVISIONS OF BONDS OR NOTES.**

(a) In an order or resolution authorizing the issuance of bonds or notes, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may enter into additional covenants relating to the bonds or notes and the pledged revenues and to the operation and maintenance of those works, improvements, facilities, plants, equipment, and appliances the revenues of which are pledged, including provision for the operation or for the leasing of all or any part of the improvements and the use or pledge of money derived from the operation contracts and leases, as the board considers appropriate.

(b) An order or resolution of the board authorizing the issuance of bonds or notes also may prohibit the further issuance of bonds, notes, or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued, subject to the conditions that may be set forth in the order or resolution.

(c) An order or resolution of the board issuing bonds or notes may include other provisions and covenants determined by the board that are not prohibited by the constitution or by this chapter.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds or notes.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.507. USE OF BOND OR NOTE PROCEEDS.**

The district may use bond or note proceeds to pay interest, administrative, and operating expenses expected to accrue during the period of construction. The period of construction under this section may not exceed three years as provided by the bond order or resolution. The district also may use bond or note proceeds to pay expenses incurred and to be incurred in the issuance, sale, and delivery of the bonds or notes.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.508. SALE OR EXCHANGE OF BONDS.**

(a) The board shall sell the bonds on the best terms and for the best possible price, but the bonds may not be sold for less than 95 percent of their face value.

(b) The district may exchange bonds for property acquired by purchase or in payment of the contract price of work done or services performed for the use and benefit of the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.510. REFUNDING BONDS.**

(a) A district may issue bonds to refund all or any part of its outstanding bonds, notes, or other obligations, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of this state.

(c) Refunding bonds may be payable from the same source as the bonds, notes, or other obligations being refunded or from other additional sources.

(d) The refunding bonds shall be approved by the attorney general and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded as provided by Section 65.509 of this code.

(e) An order or resolution authorizing the issuance of refunding bonds may provide that the refunding bonds will be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, and the refunding bonds may be issued before the cancellation of the bonds being refunded provided an amount sufficient to pay the principal of and interest on the bonds being refunded to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, is deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in this section, a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.511. OBLIGATIONS; LEGAL INVESTMENT; SECURITY FOR FUNDS.**

(a) Bonds, notes, and other obligations issued by a district are legal and authorized investments for all banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, and trustees, guardians, and for interest and sinking funds and other public funds of the state and its agencies, including the permanent school fund, and counties, cities, school districts, and other political subdivisions of the state.

(b) A district's bonds, notes, and other obligations are eligible to secure deposits of public funds of the state and its agencies and counties, cities, school districts, and other political subdivisions of the state. The bonds, notes, and other obligations are lawful and sufficient security to the extent of their market value if accompanied by all unmatured interest coupons attached to them.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.513. MANDAMUS BY BONDHOLDERS.**

In addition to other rights and remedies provided by the law of this state, if a district defaults in the payment of principal of, interest on, or redemption price on its bonds when due, or if the district fails to make payments into any fund created in the order or resolution authorizing the issuance of the bonds, or defaults in the observation or performance of any other covenants, conditions, or obligations stated in the resolution or order authorizing the issuance of its bonds, the owners of any of the bonds are entitled to a writ of mandamus issued by a court of competent jurisdiction compelling the district and its officials to observe and perform the covenants, the obligations, or conditions prescribed in the order or resolution authorizing the issuance of the district's bonds.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.515. CANCELLATION OF UNSOLD BONDS.**

(a) The board, by order or resolution, may provide for the cancellation of all or any part of any bonds that have been submitted to and approved by the attorney general and registered by the comptroller, but not yet sold, and may provide for the issuance of new bonds in lieu of the old bonds in the manner provided by this chapter for the issuance of the original bonds including their approval by the attorney general and their registration by the comptroller.

(b) The order or resolution of the board shall describe the bonds to be canceled, and also shall describe the new bonds to be issued in lieu of the old bonds.

(c) A certified copy of the order or resolution of the board providing for the cancellation of the old bonds, together with the old bonds, shall be delivered to the comptroller, who shall cancel and destroy the old bonds and make a record of the cancellation.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

## **SUBCHAPTER H. ADDING AND EXCLUDING TERRITORY; CONSOLIDATING AND DISSOLVING DISTRICTS**

### **Sec. 65.723. CONSOLIDATION OF DISTRICTS.**

Two or more districts governed by this chapter may consolidate into one district as provided by this subchapter.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

### **Sec. 65.724. ELECTIONS TO APPROVE CONSOLIDATION.**

(a) After the board of each district has agreed on the terms and conditions of consolidation, which may include the assumption by each district of the other district's bonds, notes, or other obligations and adoption of a name for the consolidated district, the board of each district shall order an election in each of their respective districts to determine whether the districts should be consolidated.

(b) The board of each district shall order the election to be held on the same day in each district and shall give notice of the election for the time and in the manner provided by law for bond elections under this chapter.

(c) The districts may be consolidated only if the qualified voters in each district voting at the election vote in favor of the consolidation.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

### **Sec. 65.725. GOVERNING CONSOLIDATED DISTRICTS.**

(a) After two or more districts are consolidated, they become one district and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district or name persons to serve as officers of the consolidated district until their successors assume office under Subsection (e) of this section.

(d) On the next available uniform election date, an election shall be called and held, and directors will be elected for the consolidated district in the same manner and for the same term as directors elected under Section 65.103 of this code.

(e) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(f) The current board shall approve the bond of each new officer.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

### **Sec. 65.726. DEBTS OF ORIGINAL DISTRICTS.**

After two or more districts are consolidated, the debts of the original districts shall be protected and may not be impaired.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.727. DISSOLUTION OF DISTRICT PRIOR TO ISSUANCE OF BONDS.**

(a) If the board considers it advisable before the issuance of any bonds, notes, or other indebtedness, the board may dissolve a district and liquidate the affairs of the district as provided by this subchapter.

(b) If a majority of the board finds at any time before the issuance of bonds, notes, or other obligations or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.728. NOTICE OF HEARING.**

The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district and shall publish notice of the hearing two times in a newspaper with general circulation in the district. The notice must be posted and published at least one time no later than the 14th day before the date set for the hearing on the proposed dissolution of the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.729. HEARING.**

The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.730. BOARD'S ORDER TO DISSOLVE DISTRICT.**

If the board unanimously determines from the evidence that the best interests of the persons and property in the district will be served by dissolving the district, the board shall enter the appropriate findings and order in its records dissolving the district. Otherwise the board shall enter its order providing that the district has not been dissolved.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)

**Sec. 65.731. JUDICIAL REVIEW OF BOARD'S ORDER.**

The board's decree to dissolve the district may be appealed in the manner provided by Sections 65.708-65.710 of this code for the review of an order excluding land from the district.

(Added by Acts 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4.) (Amended by Acts 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1.)



## **WATER CODE APPENDICES**

### **LEGISLATIVE ACTS RELATED TO SELECT STATUTES, TEXAS WATER CODE**

Act of Mar. 29, 1971, 62nd Leg., R.S., ch. 58 (HB 343), § 1, 1971 Tex. Gen. Laws 110 (eff. Aug. 30, 1971). (Adoption of the Texas Water Code)

Act of Jun. 2, 1975, 64th Leg., R.S., ch. 344 (SB 137), § 1, 1975 Tex. Gen. Laws 925 (eff. Jun. 19, 1975)

Act of May 17, 1977, 65th Leg., R.S., ch. 870 (SB 1139), § 1, 1977 Tex. Gen. Laws 2207 (eff. Sept. 1, 1977).

Act of May 30, 1983, 68th Leg., R.S., ch. 435 (HB 1769), § 4, 1983 Tex. Gen. Laws 2442, 2448 (eff. Aug. 29, 1983). (Added chapter 65, Special Utility Districts)

Act of May 8, 1985, 69th Leg., R.S., ch. 133 (HB 2), §§ 1.01, 1.08, 1985 Tex. Gen. Laws 617, 619 (eff. Nov. 5, 1985).

Act of May 26, 1985, 69th Leg., R.S., ch. 239 (HB 1593), § 38, 1985 Tex. Gen. Laws 1181, 1191 (eff. Sept. 1, 1985).

Act of May 21, 1985, 69th Leg., R.S., ch. 447 (HB 181), § 1, 1985 Tex. Gen. Laws 1580 (eff. Nov. 15, 1985). (Reenacted chapter 65, Special Utility Districts)

Act of May 17, 1985, 69th Leg., R.S., ch. 479 (SB 813), § 74, 1985 Tex. Gen. Laws 1652, 1704 (eff. Sept. 1, 1985).

Act of May 26, 1985, 69th Leg., R.S., ch. 795 (SB 249), § 1.001, 1.003, 1.005, 1.153, 3.005, 1985 Tex. Gen. Laws 2719, 2735, 2736, 2779, 2789 (eff. Aug. 26, 1985). (Adopted chapter 13, Water Rates and Services)

Act of April 30, 1987, 70th Leg., R.S., ch. 88 (SB 436), § 1, 1985 Tex. Gen. Laws 197 (eff. May 14, 1987). (Added subchapter N to chapter 13)

Act of April 30, 1987, 70th Leg., R.S., ch. 149 (SB 896), § 47, 1985 Tex. Gen. Laws 707, 1306 (eff. Sept. 1, 1987). (Adopted Local Government Code)

Act of May 22, 1987, 70th Leg., R.S., ch. 399 (HB 1328), § 1, 1985 Tex. Gen. Laws 1922 (eff. Sept. 1, 1987).

Act of Jun. 1, 1987, 70th Leg., R.S., ch. 539 (HB 1459), §§ 1-27, 1985 Tex. Gen. Laws 2161 (eff. Sept. 1, 1987).

Act of Jun. 1, 1987, 70th Leg., R.S., ch. 583 (HB 2035), § 1, 1985 Tex. Gen. Laws 2300 (eff. Aug. 31, 1987).

Act of Jun. 1, 1987, 70th Leg., R.S., ch. 1102 (SB 408), §§ 5-6, 1985 Tex. Gen. Laws 3768, 3771 (eff. Sept. 1, 1987).

Act of February 21, 1989, 71st Leg., R.S., ch. 1 (SB 220), § 46(f), 1989 Tex. Gen. Laws 1, 49, 52 (eff. Aug. 28, 1989).

Act of May 29, 1989, 71st Leg., R.S., ch. 567 (HB 1808), §§ 1-47, 1989 Tex. Gen. Laws 1883 (eff. Sept. 1, 1989).

Act of May 28, 1989, 71st Leg., R.S., ch. 624 (SB 2), § 3.13, 1989 Tex. Gen. Laws 2063, 2092 (eff. Sept. 1, 1989).

Act of May 29, 1989, 71st Leg., R.S., ch. 926 (SB 1067), § 1, 1989 Tex. Gen. Laws 3968 (eff. Aug. 28, 1989).

Act of Mar. 21, 1991, 72nd Leg., R.S., ch. 14 (SB 404), § 284(75), 1991 Tex. Gen. Laws 42, 219, 236 (eff. Sept. 1, 1991).

Act of May 27, 1991, 72nd Leg., R.S., ch. 678 (HB 827), §§ 1-14, 1991 Tex. Gen. Laws 2459 (eff. Sept. 1, 1991).

Act of May 27, 1991, 72nd Leg., R.S., ch. 710 (HB 1986), § 10, 1991 Tex. Gen. Laws 2538, 2546 (eff. August 26, 1991).

Act of May 27, 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 2, 1991 Tex. Gen. Laws 2944, 2949 (eff. Jun. 16, 1991).

Act of Jul. 30, 1991, 72nd Leg., 1st C.S., ch. 3 (SB 2), §§ 1.001-.022, 1.057-.058, 1.082, 4.01, 4.02-.04, 1991 Tex. Gen. Laws 4, 20, 71, 72 (§§ 1.001-.058 eff. Aug. 12, 1991; all other sections eff. Sept. 1, 1991).

Act of May 19, 1993, 73rd Leg., R.S., ch. 402 (HB 1153), § 1, 1993 Tex. Gen. Laws 1701 (eff. Aug. 30, 1993).

Act of May 27, 1993, 73rd Leg., R.S., ch. 549 (HB 2199), § 1, 1993 Tex. Gen. Laws 2054 (eff. Sept. 1, 1993).

Act of May 30, 1993, 73rd Leg., R.S., ch. 564 (SB 1234), § 1.02, 1993 Tex. Gen. Laws 2074, 2075 (eff. Jun. 11, 1993).

Act of May 22, 1993, 73rd Leg., R.S., ch. 652 (HB 2677), §§ 1-4, 1993 Tex. Gen. Laws 2436 (eff. Aug. 30, 1993).

Act of May 30, 1993, 73rd Leg., R.S., ch. 660 (SB 83), §§ 7-8, 1993 Tex. Gen. Laws 2447, 2449 (eff. Sept. 1, 1993).

Act of May 30, 1993, 73rd Leg., R.S., ch. 746 (HB 2605), § 1, 1993 Tex. Gen. Laws 2914 (eff. Aug. 30, 1993).

Act of May 29, 1993, 73rd Leg., R.S., ch. 772 (HB 2714), § 1, 1993 Tex. Gen. Laws 3024 (eff. Aug. 30, 1993).

Act of Apr. 25, 1995, 74th Leg., R.S., ch. 76 (SB 959), § 5.95(7), (49), (53), (59), 11.283-.286, 1995 Tex. Gen. Laws 458, 543, 544, 547, 549, 550, 779 (eff. Sept. 1, 1995).

Act of May 4, 1995, 74th Leg., R.S., ch. 106 (SB 12), § 2, 1995 Tex. Gen. Laws 898, 899 (eff. Sept. 1, 1993).

Act of May 18, 1995, 74th Leg., R.S., ch. 400 (HB 2387), §§ 1-8, 1995 Tex. Gen. Laws 2954, (eff. Sept. 1, 1995).

Act of May 26, 1995, 74th Leg., R.S., ch. 628 (HB 1783), § 1 1995 Tex. Gen. Laws 3495 (eff. Sept. 1, 1995).

Act of May 25, 1995, 74th Leg., R.S., ch. 715 (SB 626), §§1, 35-36, 1995 Tex. Gen. Laws 3755, 3802 (eff. Sept. 1, 1995).

Act of May 27, 1995, 74th Leg., R.S., ch. 814 (HB 1935), § 1 to 4, 1995 Tex. Gen. Laws 4185 (eff. Aug. 28, 1995).

Act of May 28, 1995, 74th Leg., R.S., ch. 979 (HB 1001), §§ 6-14, 1995 Tex. Gen. Laws 4895 4906 (eff. Jun. 16, 1995).

  

Act of May 12, 1997, 75th Leg., R.S., ch. 333 (HB 3231), § 1, 5 1997 Tex. Gen. Laws 1422, 1423 (eff. Sept. 1, 1997).

Act of May 14, 1997, 75th Leg., R.S., ch. 409 (HB 1406), § 1, 1997 Tex. Gen. Laws 1649 (eff. May 28, 1997).

Act of May 15, 1997, 75th Leg., R.S., ch. 474 (HB 2851), § 1, 1997 Tex. Gen. Laws 1795 (eff. Sept. 1, 1997).

Act of Jun. 1, 1997, 75th Leg., R.S., ch. 1010 (SB 1), §§ 1.03, 2.02, 5.13, 6.01-.14, 6.28-.31, 6.33, 1997 Tex. Gen. Laws 3610, 3616, 3619, 3653, 3663, 3664, 3678, (eff. Sept. 1, 1997).

Act of May 30, 1997, 75th Leg., R.S., ch. 1070 (SB 1865), §§ 40-43, 1997 Tex. Gen. Laws 4074, 4083 (eff. Sept. 1, 1997).

Act of May 31, 1997, 75th Leg., R.S., ch. 1072 (SB 1876), § 1, 1997 Tex. Gen. Laws 4094 (eff. Sept. 1, 1997).

  

Act of Apr. 23, 1999, 76th Leg., R.S., ch. 62 (SB 1368), § 18.52-.53, 18.67, 19.01(110), 1999 Tex. Gen. Laws 127, 409, 411, 418 (eff. Sept. 1, 1999).

Act of Apr. 28, 1999, 76th Leg., R.S., ch. 86 (SB 950), § 1, 1999 Tex. Gen. Laws 467 (eff. Aug. 30, 1999).

Act of May 17, 1999, 76th Leg., R.S., ch. 320 (HB 1069), §§ 1-2, 1999 Tex. Gen. Laws 1226 (eff. Aug. 30, 1999).

Act of May 24, 1999, 76th Leg., R.S., ch. 404 (SB 1421), §§ 29-31, 1999 Tex. Gen. Laws 2523, 2534 (eff. Sept. 1, 1999).

Act of May 30, 1999, 76th Leg., R.S., ch. 1374 (HB 1291), § 1, 1999 Tex. Gen. Laws 4650 (eff. Aug. 30, 1999).

Act of May 29, 1999, 76th Leg., R.S., ch. 1375(HB 1362), § 1, 1999 Tex. Gen. Laws 4651 (eff. Sept. 1, 1999).

  

Act of May 10, 2001, 77th Leg., R.S., ch. 376 (SB 1175), § 3.01, 2001 Tex. Gen. Laws 688, 696 (eff. Sept. 1, 2001).

Act of May 25, 2001, 77th Leg., R.S., ch. 669 (HB 2810), § 150, 2001 Tex. Gen. Laws 1244, 1269 (eff. Sept. 1, 2001).

Act of May 27, 2001, 77th Leg., R.S., ch. 873 (HB 2404), §§ 1-2, 2001 Tex. Gen. Laws 1749 (eff. Sept. 1, 2001).

Act of May 28, 2001, 77th Leg., R.S., ch. 965 (HB 2912), §§ 1.01, 3.10, 20.01, 2001 Tex. Gen. Laws 1933, 1949, 1990 (eff. Sept. 1, 2001). (Changed name to TCEQ)

Act of May 27, 2001, 77th Leg., R.S., ch. 966 (SB 2), §§ 2.01, 4.03, 10.01-.07, 2001 Tex. Gen. Laws 1991, 1995, 2067, 2078 (eff. Sept. 1, 2001).

Act of May 23, 2001, 77th Leg., R.S., ch. 1068 (HB 2033), § 1, 2001 Tex. Gen. Laws 2352 (eff. Sept. 1, 2001).

Act of May 23, 2001, 77th Leg., R.S., ch. 1126 (HB 2588), § 1, 2001 Tex. Gen. Laws 2510 (eff. June 15, 2001).

Act of May 27, 2001, 77th Leg., R.S., ch. 1234 (SB 312), § 11, 2001 Tex. Gen. Laws 2881, 2886 (eff. Sept. 1, 2001).

Act of Jun. 1, 2003, 78th Leg., R.S., ch. 200 (HB 3442), § 6(a), 2003 Tex. Gen. Laws 784, 785 (eff. Sept. 1, 2003).

Act of May 20, 2003, 78th Leg., R.S., ch. 494 (HB 1014), §§ 1-2, 2003 Tex. Gen. Laws 1765 (eff. Jun. 20, 2003).

Act of May 28, 2003, 78th Leg., R.S., ch. 673 (HB 2388), §§ 1-2, 2003 Tex. Gen. Laws 2091 (eff. Sept. 1, 2003).

Act of May 28, 2003, 78th Leg., R.S., ch. 688 (HB 2660, § 1, 2003 Tex. Gen. Laws 2116 (eff. Jun. 20, 2003).

Act of May 28, 2003, 78th Leg., R.S., ch. 690 (HB 2663), § 1, 2003 Tex. Gen. Laws 2119 (eff. Jun. 20, 2003).

Act of May 26, 2003, 78th Leg., R.S., ch. 1067 (HB 1567), § 22, 2003 Tex. Gen. Laws 3075, 3092 (eff. Sept. 1, 2003).

Act of May 24, 2005, 79th Leg., R.S., ch. 523 (HB 841), § 1, 2005 Tex. Gen. Laws 1425 (eff. Sept. 1, 2005).

Act of May 25, 2005, 79th Leg., R.S., ch. 871 (SB 1063), § 2, 2005 Tex. Gen. Laws 2952 (eff. Sept. 1, 2005).

Act of May 28, 2005, 79th Leg., R.S., ch. 1057 (HB 1358), § 1.01, 2005 Tex. Gen. Laws 3525 (eff. Sept. 1, 2005).

Act of May 30, 2005, 79th Leg., R.S., ch. 1097 (HB 2201), § 6, 2005 Tex. Gen. Laws 3619, 3622 (eff. Jun. 18, 2005).

Act of May 25, 2005, 79th Leg., R.S., ch. 1106 (HB 2301), § 1, 2005 Tex. Gen. Laws 3669 (eff. Sept. 1, 2005).

Act of May 29, 2005, 79th Leg., R.S., ch. 1145 (HB 2876), § 1-13, 2005 Tex. Gen. Laws 3771 (eff. Sept. 1, 2005).

Act of May 25, 2005, 79th Leg., R.S., ch. 1244 (HB 1673), § 1-2, 2005 Tex. Gen. Laws 4011 (eff. Sept. 1, 2005).

Act of May 22, 2007, 80th Leg., R.S., ch. 599 (HB 149), § 1, 2007 Tex. Gen. Laws 1156 (eff. Sept. 1, 2007).

Act of May 26, 2007, 80th Leg., R.S., ch. 1323 (SB 1436), § 2, 2007 Tex. Gen. Laws 4474 (eff. Sept. 1, 2007).

Act of May 28, 2007, 80th Leg., R.S., ch. 1351 (HB 3), § 1.01-.04, 2007 Tex. Gen. Laws 4612 (eff. Sept. 1, 2007).

Act of May 28, 2007, 80th Leg., R.S., ch. 1352 (HB 4), §§ 4, 6, 2007 Tex. Gen. Laws 4635, 4637 (eff. Sept. 1, 2007).

Act of May 28, 2007, 80th Leg., R.S., ch. 1430 (SB 3), §§ 1.01-.04, 2.01-.02, 2.04-.09, 2007 Tex. Gen. Laws 5848, 5865 (eff. Sept. 1, 2007).

Act of May 11, 2009, 81st Leg., R.S., ch. 87 (SB 1969), § 24.001, 2009 Tex. Gen. Laws 208, 340 (eff. Sept. 1, 2009).

Act of May 14, 2009, 81st Leg., R.S., ch. 151 (SB 2126), § 1, 2009 Tex. Gen. Laws 482 (eff. Sept. 1, 2009).

Act of May 27, 2009, 81st Leg., R.S., ch. 363 (HB 1295), § 1, 2009 Tex. Gen. Laws 902 (eff. Sept. 1, 2009).

Act of May 21, 2009, 81st Leg., R.S., ch. 1004 (HB 4043), § 1, 2009 Tex. Gen. Laws 2618 (eff. Jun. 19, 2009).

Act of May 30, 2009, 81st Leg., R.S., ch. 1242 (SB 2306), § 1, 2009 Tex. Gen. Laws 3968 (eff. Jun. 19, 2009).

Act of May 21, 2009, 81st Leg., R.S., ch. 1316 (HB 2667), § 5, 2009 Tex. Gen. Laws 4129, 4133 (eff. Sept. 1, 2009).

Act of May 30, 2009, 81st Leg., R.S., ch. 1349 (SB 361), § 1, 2009 Tex. Gen. Laws 4269 (eff. Jun. 19, 2009).

Act of May 24, 2011, 82nd Leg., R.S., ch. 539 (HB 2619), §§ 1-2, 2011 Tex. Gen. Laws 1328 (eff. Jun. 17, 2011).

Act of May 25, 2011, 82nd Leg., R.S., ch. 723 (HB 805), § 1, 2011 Tex. Gen. Laws 1737 (eff. Jun. 17, 2011).

Act of May 28, 2011, 82nd Leg., R.S., ch. 1021 (HB 2694), §§ 4.12, 5.01, 6.03, 7.01, 9.01-02, 2011 Tex. Gen. Laws 2579, 2587, 2593, 2595, 2596, 2598 (eff. Sept. 1, 2011).

Act of May 27, 2011 82nd Leg., R.S., ch. 1163 (HB 2702), § 180, 2011 Tex. Gen. Laws 3024, 3054 (eff. Sept. 1, 2011).

Act of May 29, 2011 82nd Leg., R.S., ch. 1233 (SB 660), § 5, 2011 Tex. Gen. Laws 3287, 3289 (eff. Sept. 1, 2011).

Act of May 23, 2011 82nd Leg., R.S., ch. 1311 (HB 3391), § 7, 2011 Tex. Gen. Laws 3737, 3742 (eff. Sept. 1, 2011).

Act of May 26, 2011 82nd Leg., R.S., ch. 1325 (SB 573), §§ 1-4, 2011 Tex. Gen. Laws 3839 (eff. Sept. 1, 2011).

Act of May 2, 2013, 83rd Leg., R.S., ch. 92 (SB 655), § 2, 2013 Tex. Gen. Laws 173, eff. May 18, 2013.

Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), §§ 2.01-2.86, 2013 Tex. Gen. Laws 725, 730, (eff. Sept. 1, 2013). (Transferred rates and CCNs to PUC)

Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), §§1-86, 2013 Tex. Gen. Laws 772 (eff. Sept. 1, 2013). (Transferred rates and CCNs to PUC)

Act of May, 21 2015, 84th Leg., R.S., ch. 515 (HB 942), § 32, 2015 Tex. Gen. Laws \_\_\_\_, \_\_\_\_ (eff. Sept. 1, 2015).

Act of May, 26 2015, 84th Leg., R.S., ch. 853 (SB 1148), §§ 2-10, 2015 Tex. Gen. Laws \_\_\_\_, \_\_\_\_ (eff. Sept. 1, 2015).

Act of May, 26 2015, 84th Leg., R.S., ch. 673 (SB 789), §§ 1-2, 2015 Tex. Gen. Laws \_\_\_\_, \_\_\_\_  
(eff. Sept. 1, 2015).

Act of May, 29 2015, 84th Leg., R.S., ch. 1236 (SB 1296), § 18.001, 2015 Tex. Gen. Laws \_\_\_\_,  
\_\_\_\_ (eff. Sept. 1, 2015).

# PROVISIONS OF LEGISLATIVE ACTS NOT CODIFIED IN WATER CODE

## Acts 1985, 69th Legislature, Regular Session

### ch. 7953 - SB 249

SECTION 10.003. (a) The purpose of Article C, Part 3, of this Act is to transfer water and sewer utility regulation from the Public Utility Commission of Texas under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) to the Texas Water Commission, and Chapter 13, Water Code, as added by this Act, is not intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of those exercised by the Public Utility Commission of Texas before March 1, 1986. Further, Chapter 13, Water Code, is not intended to affect the jurisdiction and responsibilities for water rate regulation presently vested in the Texas Water Commission under Title 2 of the Water Code. The transfer of water and sewer utility regulation from the Public Utility Commission of Texas to the Texas Water Commission does not impair or affect any act done or obligation, right, permit, license, standard or requirement, or penalty accrued or existing under the authority of the Public Utility Regulatory Act, and any prior action of the Public Utility Commission of Texas remains in force pertaining to water and sewer utilities for the purpose of sustaining any proper action concerning such obligation, right, permit, license, standard or requirement, or penalty. No judicial action or proceeding instituted before March 1, 1986, is affected by the enactment of Chapter 13, Water Code.

(b) On March 1, 1986, all equipment, data, documents, facilities, and other items of the Public Utility Commission of Texas pertaining to water and sewer utilities shall be transferred to the Texas Water Commission.

(c) On March 1, 1986, the Texas Water Commission shall implement the powers and duties delegated to it by this Act. The commission, to the extent it considers advisable and under term and conditions considered necessary and desirable, may contract with the Public Utility Commission of Texas to provide for the disposition of all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas on March 1, 1986, and the Public Utility Commission of Texas shall cooperate with the Texas Water Commission in assisting in the orderly transition of regulatory power contemplated by this Act. The contract may provide that the staff of the Public Utility Commission of Texas shall continue to process, analyze, investigate, provide evidence, and conduct hearings on the pending water and sewer utility matters consistent with this Act. Any matter that requires a final decision, however, shall be reduced to a written proposal for decision conforming to the requirements of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), which, together with the record, shall be submitted to the Texas Water Commission for final decision.

(d) The Texas Water Commission and the governing bodies of appropriate municipalities, if any, shall assume jurisdiction, and all powers and duties of regulation under Chapter 13, Water Code, on March 1, 1986.

(e) Nothing in this Act shall affect the jurisdiction of the Texas Water Commission otherwise afforded under Sections 11.036, 11.041, 12.013, and 50.275, Water Code.

SECTION 10.009. This Act takes effect September 1, 1985.

## Acts 2011, 82nd Legislature, Regular Session

### ch. 723 - HB 805

SECTION 2. (a) Not later than November 1, 2011, each affected utility described by Section 13.1395(a)(1)(B), Water Code, as amended by this Act, shall submit the information required by Section 13.1396, Water Code, to:

- (1) each appropriate county judge and office of emergency management;
- (2) the Public Utility Commission of Texas; and
- (3) the division of emergency management of the governor.

(b) Not later than February 1, 2012, each affected utility described by Section 13.1395(a)(1)(B), Water Code, as amended by this Act, shall submit to the Texas Commission on Environmental Quality the emergency preparedness plan required by Section 13.1395, Water Code, as amended by this Act.

(c) Not later than June 1, 2012, each affected utility described by Section 13.1395(a)(1)(B), Water Code, as amended by this Act, shall implement the emergency preparedness plan approved by the Texas Commission on Environmental Quality under Section 13.1395, Water Code, as amended by this Act.

(d) An affected utility described by Section 13.1395(a)(1)(B), Water Code, as amended by this Act, may file with the Texas Commission on Environmental Quality a written request for an extension, not to exceed 90 days, of the date by which the affected utility is required under Subsection (b) of this section to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under Subsection (c) of this section to implement the affected utility's emergency preparedness plan. The Texas Commission on Environmental Quality shall approve the requested extension for good cause shown.

SECTION 3. 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, 2011.

## Acts 2013, 83rd Legislature, Regular Session

### ch. 170 - HB 1600

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.

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.

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

### **Acts 2015, 84th Legislature, Regular Session**

#### **ch. 673 - SB 789**

SECTION 3. As soon as practicable after the effective date of this Act, the Public Utility Commission of Texas shall adopt rules and establish procedures relating to the notice required under Section 13.2475, Water Code, as added by this Act.

SECTION 4. This Act takes effect September 1, 2015.

#### **ch. 1293 - SB 1296**

SECTION 18.001. Section 13.1871(s), Water Code, as added by Chapter 171 (S.B. 567), Acts of the 83rd Legislature, Regular Session, 2013, is repealed as duplicative of Section 13.1871(s), Water Code, as added by Chapter 170 (H.B. 1600), Acts of the 83rd Legislature, Regular Session, 2013.

SECTION 22.001. Except as otherwise provided by this Act, this Act takes effect September 1, 2015.

# LOCAL GOVERNMENT CODE

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## TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

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### SUBTITLE B. COUNTY REGULATORY AUTHORITY

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#### CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS

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##### SUBCHAPTER B. SUBDIVISION PLATTING REQUIREMENTS IN COUNTY NEAR INTERNATIONAL BORDER

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###### Sec. 232.022. APPLICABILITY.

(a) This subchapter applies only to:

- (1) a county any part of which is located within 50 miles of an international border; or
- (2) a county:
  - (A) any part of which is located within 100 miles of an international border;
  - (B) that contains the majority of the area of a municipality with a population of more than 250,000; and
  - (C) to which Subdivision (1) does not apply.

(b) This subchapter applies only to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of the county. A lot is presumed to be intended for residential use if the lot is five acres or less. This subchapter does not apply if the subdivision is incident to the conveyance of the land as a gift between persons related to each other within the third degree by affinity or consanguinity, as determined under Chapter 573, Government Code.

(c) Except as provided by Subsection (c-1), for purposes of this section, land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of municipalities.

(c-1) Land in a municipality's extraterritorial jurisdiction is not considered to be in the jurisdiction of a county for purposes of this section if the municipality and the county have entered into a written agreement under Section 242.001 that authorizes the municipality to regulate subdivision plats and approve related permits in the municipality's extraterritorial jurisdiction.

(d) This subchapter does not apply if all of the lots of the subdivision are more than 10 acres.

(Added by Acts 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 4.) (Amended by Acts 1997, 75th Leg., R.S., ch. 376 (SB 569), § 1; Acts 1999, 76th Leg., R.S., ch. 404 (SB 1421), § 5; Acts 2003, 78th Leg., R.S., ch. 737 (HB 3221), § 1; Acts 2005, 79th Leg., R.S., ch. 708 (SB 425), § 2; Acts 2013, 83rd Leg., R.S., ch. 1364 (SB 1599), § 2.)

**Note: The definition of affected county in Texas Water Code § 13.002 is defined as a county to which subchapter B, chapter 232, Local Government Code applies.**

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## TITLE 13. WATER AND UTILITIES

### SUBTITLE A. MUNICIPAL WATER AND UTILITIES

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### CHAPTER 552. MUNICIPAL UTILITIES

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#### SUBCHAPTER C. MUNICIPAL DRAINAGE UTILITY SYSTEMS

\* \* \* \* \*

##### **Sec. 552.041. SHORT TITLE.**

This subchapter may be cited as the Municipal Drainage Utility Systems Act.

(Added by Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1.) (Amended by Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local Government Code § 402.041).)

##### **Sec. 552.042. LEGISLATIVE FINDING.**

(a) The legislature finds that authority is needed to:

- (1) permit municipalities to establish a municipal drainage utility system within the established service area;
- (2) provide rules for the use, operation, and financing of the system;
- (3) protect the public health and safety in municipalities from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from nonpoint source runoff within the boundaries of the established service area;
- (4) delegate to municipalities the power to declare, after a public hearing, a drainage system created under this subchapter to be a public utility;
- (5) prescribe bases on which a municipal drainage utility system may be funded and fees in support of the system may be assessed, levied, and collected;
- (6) provide exemptions of certain persons from this subchapter; and
- (7) prescribe other rules related to the subject of municipal drainage.

(b) This subchapter is remedial.

(Added by Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 1230 (HB 1567), § 1(b); Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local Government Code § 402.042); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.87 (amended subsec. (e) to strike reference to Texas Natural Resources Conservation Commission and simply cite to Section 13.043(b), Water Code); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 87 (amended subsec. (e) to strike reference to Texas Natural Resources Conservation Commission and simply cite to Section 13.043(b), Water Code).)

**Sec. 552.043. APPLICATION OF SUBCHAPTER TO MUNICIPALITIES.**

This subchapter applies to any municipality.

(Added by Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 1230 (HB 1567), § 1(c); Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local Government Code § 402.043).)

**Sec. 552.044. DEFINITIONS.**

In this subchapter:

(1)(A) "Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

(B) "Benefitted property," in a municipality with a population of more than 1.18 million located primarily in a county with a population of 2 million or more which is operating a drainage utility system under this chapter, means a lot or tract, but does not include land appraised for agricultural use, to which drainage service is made available under this subchapter and which discharges into a creek, river, slough, culvert, or other channel that is part of the municipality's drainage utility system. Sections 552.053(c)(2) and (c)(3) do not apply to a municipality described in this subdivision.

(2) "Cost of service" as applied to a drainage system service to any benefitted property means:

(A) the prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;

(B) the prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;

(C) the prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;

(D) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;

(E) the prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the benefitted property;

(F) the prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the municipality; and

(G) the administrative costs of a drainage utility system.

(3) "Drainage" means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(4) "Drainage charge" means:

(A) the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any benefitted property; and

(B) if specifically provided by the governing body of the municipality by ordinance, an amount made in contribution to funding of future drainage system construction by the municipality.

(5) "Drainage system" means the drainage owned or controlled in whole or in part by the municipality and dedicated to the service of benefitted property, including provisions for additions to the system.

(6) "Facilities" means the property, either real, personal, or mixed, that is used in providing drainage and included in the system.

(7) "Public utility" means a drainage service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefitted property within the service area and that is based on:

- (A) an established schedule of charges;
- (B) the use of the police power to implement the service; and
- (C) nondiscriminatory, reasonable, and equitable terms as declared under this subchapter.

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor, except as provided by Section 552.0451, may a service area of one municipality extend into the boundaries of another municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

- (A) a municipality of more than 500,000 population located within 50 miles of an international border;
- (B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Natural Resource Conservation Commission; or
- (C) as provided by Section 552.0451.

(9) "User" means the person or entity who owns or occupies a benefitted property.

(10) "Improved lot or tract" means a lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

(11) "Wholly sufficient and privately owned drainage system" means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal drainage utility system.

(Added by Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 1230 (HB 1567), § 1(d); Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 1993, 73rd Leg., R.S., ch. 674 (SB 987), § 1; Acts 1993, 73rd Leg., R.S., ch. 773 (HB 2740), § 1; Acts 1995, 74th Leg., R.S., ch. 35 (SB 260), § 1; Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.258; Acts 1997, 75th Leg., R.S., ch. 633 (HB 776), § 1; Acts 1999, 76th Leg., R.S., ch. 62 (SB 1368), § 13.22; Acts 2001, 77th Leg., R.S., ch. 669 (HB 2810), § 108; Acts 2007, 80th Leg., R.S., ch. 520 (SB 688), § 1; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local Government Code § 402.044);. Acts 2011, 82nd Leg., R.S., ch. 1163 (HB 2702), § 101.)



**Sec. 552.045. ADOPTION OF SYSTEM; RULES.**

(a) Subject to the requirements in Subsections (b) and (c), the governing body of the municipality, by a majority vote of its entire membership, may adopt this subchapter by an ordinance that declares the adoption and that declares the drainage of the municipality to be a public utility.

(b) Before adopting the ordinance, the governing body must find that:

(1) the municipality will establish a schedule of drainage charges against all real property in the proposed service area subject to charges under this subchapter;

(2) the municipality will provide drainage for all real property in the proposed service area on payment of drainage charges, except real property exempted under this subchapter; and

(3) the municipality will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

(c) Before adopting the ordinance, the governing body must publish a notice in a newspaper of general circulation in the municipality stating the time and place of a public hearing to consider the proposed ordinance. The proposed ordinance must be published in full in the notice. The governing body shall publish the notice three times before the date of the hearing. The first publication must occur on or before the 30th day before the date of the hearing.

(d) After passage of the ordinance adopting this subchapter, the municipality may levy a schedule of drainage charges. The municipality must hold a public hearing on the charges before levying the charges. The municipality must give notice of the hearing in the manner provided by Subsection (c). The proposed schedule of drainage charges, as originally adopted or as revised, must be published in the notice.

(e) The municipality by ordinance may adopt and enforce rules as it considers appropriate to operate the drainage utility system. Provided, however, that the prohibitions contained in Section 212.003(a) of the Local Government Code relating to quasi-zoning and other land use regulations in the extraterritorial jurisdiction of a municipality shall apply to any rule or ordinance adopted or enacted by the municipality under this Act, except that rates may be established using impervious cover measurements relating to land use and building size.

(Added by Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1.) (Amended by Acts 1989, 71st Leg., R.S., ch. 1230 (HB 1567), § 1(e); Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.259; Acts 1997, 75th Leg., R.S., ch. 633 (HB 776), § 2; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local Government Code § 402.047).)

**Sec. 552.0451. EXTENSION OF SERVICE AREA BY CERTAIN MUNICIPALITIES.**

(a) A municipality with a population of more than 900,000 located in one or more counties with a population of less than 1.5 million as of the 1990 federal census may extend its service area:

(1) into the boundaries of another municipality if:

(A) before the extension water from the municipality to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and

(B) the extension is provided for by an interlocal agreement between the municipalities; or

(2) beyond its municipal boundaries into an unincorporated area of its extraterritorial jurisdiction if:

(A) before the extension water from the area to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and

(B) the extension is provided for by an interlocal agreement between the municipality extending its service area and the county containing the area to which the service area is to be extended.

(b) An interlocal agreement under Subsection (a) may:

(1) contain provisions necessary for the operation of a drainage system within the area to which the service area is extended; and

(2) provide for charges for treatment of drainage water and methods of assessment of the charges to an owner of a lot or tract of benefitted property in the area to which the service area is extended.

(c) Charges and methods of assessment agreed to under Subsection (b)(2) must comply with Section 552.047.

(Added by Acts 1993, 73rd Leg., R.S., ch. 773 (HB 2740), § 2.) (Amended by Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.259; Acts 1997, 75th Leg., R.S., ch. 633 (HB 776), § 2; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local Government Code § 402.0451).)

#### **Sec. 552.046. INCORPORATION OF EXISTING FACILITIES.**

The municipality may incorporate existing drainage facilities, materials, and supplies into the drainage utility system.

(Added by Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1.) (Amended by Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.259; Acts 1997, 75th Leg., R.S., ch. 633 (HB 776), § 2; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local Government Code § 402.046).)

#### **Sec. 552.047. DRAINAGE CHARGES.**

(a) The governing body of the municipality may charge a lot or tract of benefitted property for drainage service on any basis other than the value of the property, but the basis must be directly related to drainage and the terms of the levy, and any classification of the benefitted properties in the municipality must be nondiscriminatory, equitable, and reasonable.

(b) In setting the schedule of charges for drainage service, the governing body must base its calculations on an inventory of the lots and tracts within the service area. The governing body may use approved tax plats and assessment rolls for that purpose. The governing body may also consider the land use made of the benefitted property. The governing body may consider the size, in area, the number of water meters, and topography of a parcel of benefitted property, in assessing the drainage charge to the property.

(c) The governing body may fix rates for drainage charges in advance and may change, adjust, and readjust the rates and charges for drainage service from time to time. The rates must be equitable for similar services in all areas of the service area.

(d) Unless a person's lot or tract is exempted under this subchapter, the person may not use the drainage system for the lot or tract unless the person pays the full, established, drainage charge.

(e) Users residing within the established service area, but outside the municipality's boundaries, may appeal rates established for drainage charges under Section 13.043(b), Water Code.

(Added by Acts 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1.) (Amended by Acts 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1; Acts 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.259; Acts 1997, 75th Leg., R.S., ch. 633 (HB 776), § 2; Acts 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C) (sec. renumbered from Local

Government Code § 402.047); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.87 (amended subsec. (e) to strike reference to Texas Natural Resources Conservation Commission and simply cite to Section 13.043(b), Water Code); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 87.)

## **LOCAL GOVERNMENT CODE APPENDICES**

### **LEGISLATIVE ACTS RELATED TO SELECT STATUTES, LOCAL GOVERNMENT CODE**

Act of May 1, 1987, 70th Leg., R.S., ch. 149 (SB 896), § 1, 1987 Tex. Gen. Laws 707 (eff., Sept. 1, 1987)

Act of May 26, 1989, 71st Leg., R.S., ch. 1230 (HB 1567), § 1(d), 1989 Tex. Gen. Laws (eff. Aug. 28, 1989).

Act of May 27, 1991, 72nd Leg., R.S., ch. 852 (SB 1409), § 1, 1991 Tex. Gen. Laws 2944 (eff. June 16, 1991).

Act of May 29, 1993, 73rd Leg., R.S., ch. 674 (SB 987), § 1, 1993 Tex. Gen. Laws 2506 (eff. Aug. 30, 1993).

Act of May 23, 1993, 73rd Leg., R.S., ch. 773 (HB 2740), §§ 1-2, 1993 Tex. Gen. Laws 3026 (eff. June 18, 1993).

Act of April 24, 1995, 74th Leg., R.S., ch. 35 (SB 260), § 1, 1995 Tex. Gen. Laws 302 (eff. Sept. 1, 1995).

Act of April 25, 1995, 74th Leg., R.S., ch. 76 (SB 959), § 11.259, 1995 Tex. Gen. Laws 458, 772 (eff. Sept. 1, 1995).

Act of May 28, 1995, 74th Leg., R.S., ch. 979 (HB 1001), § 4, 1995 Tex. Gen. Laws 4895, 4896 (eff. Jun. 16, 1995).

Act of May 13 1997, 75th Leg., R.S., ch. 376 (SB 569), § 1, 1997 Tex. Gen. Laws 1611 (eff. Sept. 1, 1997).

Act of May 21, 1997, 75th Leg., R.S., ch. 633 (HB 776), §§ 1-2, 1997 Tex. Gen. Laws 2178, (eff. Sept. 1, 1997).

Act of April 23, 1999, 76th Leg., R.S., ch. 62 (SB 1368), § 13.22, 1999 Tex. Gen. Laws 127, 355 (eff. Sept. 1, 1999).

Act of May 24, 1999, 76th Leg., R.S., ch. 404 (SB 1421), § 5, 1999 Tex. Gen. Laws 2523, 2526 (eff. Sept. 1, 1999).

Act of May 25 2001, 77th Leg., R.S., ch. 669 (HB 2810), § 108, 2001 Tex. Gen. Laws 1244, 1259 (eff. Sept. 1, 2001).

Act of May 27, 2003, 78th Leg., R.S., ch. 737 (HB 3221), § 1, 2003 Tex. Gen. Laws 2170 (eff. Sept. 1, 2003).

Act of May 25, 2005, 79th Leg., R.S., ch. 708 (SB 425), § 2, 2005 Tex. Gen. Laws 1724, 1725 (eff. September 1, 2005).

Act of May 21, 2007, 80th Leg., R.S., ch. 520 (SB 688), § 1, 2007 Tex. Gen. Laws 920 (eff. June 16, 2007)

Act of May 15, 2007, 80th Leg., R.S., ch. 885 (HB 2278), § 3.76(a)(2)(C), 2007 Tex. Gen. Laws 1905, 2154, 2155 (eff. April 1, 2009).

Act of May 27, 2011, 82nd Leg., R.S., ch. 1163 (HB 2702), § 101, 2011 Tex. Gen. Laws 3024, 3040 (eff. Sept. 1, 2011).

Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), §§ 2.87, 2013 Tex. Gen. Laws 725, 768, (eff. Sept. 1, 2013).

Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), §87, 2013 Tex. Gen. Laws 772, 810 (eff. Sept. 1, 2013).

Act of May 25, 2013, 83rd Leg., R.S., ch. 1364 (SB 1599), § 2, 2013 Tex. Gen. Laws 3613 (eff. Sept. 1, 2013).

**PROVISIONS OF LEGISLATIVE ACTS NOT CODIFIED IN LOCAL  
GOVERNMENT CODE**

**Acts 2013, 83rd Legislature, Regular Session**

**ch. 170 - HB 1600**

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

# SPECIAL DISTRICT LOCAL LAWS CODE

## TITLE 6. WATER AND WASTEWATER

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### SUBTITLE C. SPECIAL UTILITY DISTRICTS

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#### CHAPTER 7201. AGUA SPECIAL UTILITY DISTRICT

Acts 2007, 80th Leg., R.S., ch. 1430 (SB 3), § 9.02 retitled chapter.

##### SUBCHAPTER A. GENERAL PROVISIONS

###### Sec. 7201.001. DEFINITIONS.

Unless the context otherwise requires, in this chapter:

- (1) "Board" means the board of directors of the district.
- (2) "Corporation" means the La Joya Water Supply Corporation.
- (3) "Director" means a member of the board.
- (4) "District" means the Agua Special Utility District.

(Added by Acts 2005, 79th Leg., ch. 1057 (HB 1358), § 2.01.) (Amended by Acts 2007, 80th Leg., R.S., ch. 1430 (SB 3), § 9.02 (amended subd. (3) and added subd. (4)).)

###### Sec. 7201.002. NATURE OF CORPORATION AND DISTRICT.

(a) The corporation is a water supply corporation in Hidalgo and Starr Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, and operating in accordance with Chapter 67, Water Code.

(b) The district is:

- (1) a special utility district in Hidalgo and Starr Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, and operating in accordance with Chapters 49 and 65, Water Code;
- (2) a retail public utility as defined by Section 13.002, Water Code; and
- (3) the successor in interest to the corporation.

(c) The corporation shall be dissolved and succeeded without interruption by the district as provided by Subchapter A1.

(Added by Acts 2005, 79th Leg., ch. 1057 (HB 1358), § 2.01.) (Amended by Acts 2007, 80th Leg., R.S., ch. 1430 (SB 3), § 9.03 (amended subsec. (c)).)

###### Sec. 7201.003. APPLICABILITY OF OTHER LAW.

Except as otherwise provided by this chapter, Chapters 49 and 65, Water Code, including Sections 49.211(a) and 65.201(a), Water Code, apply to the district.

(Added by Acts 2005, 79th Leg., ch. 1057 (HB 1358), Sec. 2.01.)

**Sec. 7201.004. REGULATORY CONFLICTS.**

(a) If a municipality asserts regulatory authority over any geographic area in the district and a municipal regulation applicable to that geographic area conflicts with a rule of the district, the regulation of the municipality prevails.

(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.

(Added by Acts 2005, 79th Leg., R.S., ch. 1057, § 2.01.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.88 (amended subd. (b)(2) to add the Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 88 (amended subd. (b)(2) to add the Public Utility Commission of Texas).)

**Sec. 7201.005. INITIAL DISTRICT TERRITORY.**

(a) The district is composed of the territory described by Section 9.12 of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this subsection.

(b) The boundaries and field notes contained in Section 9.12 of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this subsection form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

- (1) the organization, existence, or validity of the district;
- (2) the right of the district to issue bonds; or
- (3) the legality or operation of the district.

(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.

(d) The territory of the district does not include and the district does not have jurisdiction over land that has never been in the service area of the corporation regardless of any erroneous inclusion of that land in the boundaries and field notes in Section 9.12 of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this section.

(Added by Acts 2005, 79th Leg., R.S., ch. 1057 (HB 1358), § 2.01.) (Amended by Acts 2007, 80th Leg., R.S., ch. 1430 (SB 3), § 9.04 (amended subsecs. (a) & (b) and added subsec (d)); Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.89 (amended subsec. (c) to add the Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 89 (amended subsec. (c) to add the Public Utility Commission of Texas).)

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**SUBCHAPTER C. POWERS AND DUTIES**

**Sec. 7201.101. GENERAL POWERS AND DUTIES.**

Except as otherwise provided by this chapter, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 65, Water Code, applicable to districts created under Section 59, Article XVI, Texas Constitution.

(Added by Acts 2005, 79th Leg., ch. 1057 (HB 1358), § 2.01.)



**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 to provide uninterrupted, continuous, and adequate service to existing and future customers for water, sewer, and contract services.

(Added by Acts 2005, 79th Leg., R.S., ch. 1057 (HB 1358), § 2.01.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.90 (amended sec. to add Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 90 (amended sec. to add Public Utility Commission of Texas).)

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**SUBTITLE F. MUNICIPAL UTILITY DISTRICTS**

**CHAPTER 8363. BEARPEN CREEK MUNICIPAL UTILITY DISTRICT OF HUNT COUNTY**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 8363.001. DEFINITIONS.**

In this chapter:

- (1) "Board" means the district's board of directors.
- (2) "City" means a municipality in whose corporate limits or extraterritorial jurisdiction the district is located.
- (3) "Commission" means the Texas Commission on Environmental Quality.
- (4) "Director" means a board member.
- (5) "District" means the Bearpen Creek Municipal Utility District of Hunt County.

(Added by Acts 2011, 82nd Leg., R.S., ch. 805 (HB 2363), § 1.)

**Sec. 8363.002. NATURE OF DISTRICT.**

The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

(Added by Acts 2011, 82nd Leg., R.S., ch. 805 (HB 2363), § 1.)

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**SUBCHAPTER C. POWERS AND DUTIES**

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**Sec. 8363.106. ACQUISITION OF PERMIT RIGHTS.**

(a) Using any available district money, including bond proceeds, the district may pay all expenses related to the acquisition of a certificate of public convenience and necessity from another retail public utility and any other permit rights necessary to provide the city authority to provide retail water or sewer service in the district. The acquisition, by purchase or otherwise, may be made by the district on behalf of and for transfer to the city or by the city directly.

(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 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.

(c) The city may contract with the district to carry out the purposes of this section without further authorization.

(Added by Acts 2011, 82nd Leg., R.S., ch. 805 (HB 2363), § 1.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.91 (amended subsec. (b) to add Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 91 (amended subsec. (b) to add Public Utility Commission of Texas).)

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## **SUBCHAPTER F. DISSOLUTION OF DISTRICT**

### **Sec. 8363.251. DISSOLUTION BY CITY ORDINANCE.**

(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 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.

(b) If the city dissolves the district under Subsection (a):

(1) any district assets that remain after the payment of debts shall be transferred to the city; and

(2) the organization of the district shall be maintained until all the debts are paid or assumed and remaining assets are transferred.

(c) This section does not limit the authority of the city to dissolve the district under Chapter 43, Local Government Code, or other general law.

(Added by Acts 2011, 82nd Leg., R.S., ch. 805 (HB 2363), § 1.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.92 (amended subd. (a)(3) to add Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 92 (amended subd. (a)(3) to add Public Utility Commission of Texas).)

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**SUBTITLE H. DISTRICTS GOVERNING GROUNDWATER  
CHAPTER 8801. HARRIS-GALVESTON SUBSIDENCE DISTRICT**

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**SUBCHAPTER E. APPEAL AND ENFORCEMENT PROVISIONS**

**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 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 shall hear the appeal not later than the 180th day after the date the appeal is filed.

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

(Acts 2003, 78th Leg., R.S., ch. 1277 (HB 3508), § 1.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.93 (amended subsecs. (a), (b), & (c) to add Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 93 (amended subsecs. (a), (b), & (c) to add Public Utility Commission of Texas).)

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**CHAPTER 8803. STARR COUNTY GROUNDWATER CONSERVATION  
DISTRICT**

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**SUBCHAPTER D. MERGER WITH WATER SUPPLY OR SEWER SERVICE  
CORPORATION**

**Sec. 8803.151. DEFINITIONS.**

In this subchapter:

- (1) "Commission" means the Public Utility Commission of Texas.
- (2) "Directors" means the board of directors of a water supply or sewer service corporation.

(Added by Acts 2005, 79th Leg., R.S., ch. 451 (SB 1848), § 4.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.94 (amended subd. (1) to add Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 94 (amended subd. (1) to add Public Utility Commission of Texas).)

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**CHAPTER 8808. DUVAL COUNTY GROUNDWATER CONSERVATION  
DISTRICT**

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**SUBCHAPTER D. MERGER WITH WATER CONTROL AND IMPROVEMENT  
DISTRICT**

**Sec. 8808.151. DEFINITIONS.**

In this subchapter:

- (1) "Commission" means the Public Utility Commission of Texas.
- (2) "Directors" means the board of directors of a water control and improvement district.

(Added by Acts 2005, 79th Leg., R.S., ch. 450 (SB 1847), § 1.) (Amended by Acts 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.95 (amended subd. (1) to add Public Utility Commission of Texas); Acts 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 95 (amended subd. (1) to add Public Utility Commission of Texas).)

## **SPECIAL DISTRICT LOCAL LAWS CODE APPENDICES**

### **LEGISLATIVE ACTS RELATED TO SELECT STATUTES, SPECIAL DISTRICT LOCAL LAWS CODE**

Act of May 20, 2003, 78th Leg., R.S., ch. 1277 (HB 3508), § 1, 2003 Tex. Gen. Laws 4454 (eff. Apr. 1, 2005).

Act of May 28, 2005, 79th Leg., R.S., ch. 1057 (HB 1358), § 2.01, 2005 Tex. Gen. Laws 3525 (eff. Sept. 1, 2005).

Act of May 20, 2005, 79th Leg., R.S., ch. 450 (SB 1847), § 1, 2005 Tex. Gen. Laws 1228 (eff. Jun. 17, 2005).

Act of May 20, 2005, 79th Leg., R.S., ch. 451 (SB 1848), § 4, 2005 Tex. Gen. Laws 1233 (eff. Jun. 17, 2005).

Act of May 28, 2007, 80th Leg., R.S., ch. 1430 (SB 3), § 9.04, 2007 Tex. Gen. Laws 5848, 5885 (eff. Sept. 1, 2007).

Act of May 25, 2011, 82nd Leg., R.S., ch. 805 (HB 2363), § 1, 2011 Tex. Gen. Laws 1856, 1857 (eff. Jun. 17, 2011).

Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), §§ 2.88-.95, 2013 Tex. Gen. Laws 725, 768, (eff. Sept. 1, 2013).

Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), §§ 88-95, 2013 Tex. Gen. Laws 772, 810 (eff. Sept. 1, 2013).

**PROVISIONS OF LEGISLATIVE ACTS NOT CODIFIED IN SPECIAL  
DISTRICT LOCAL LAW CODE**

**Acts 2013, 83rd Legislature, Regular Session**

**ch. 170 - HB 1600**

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