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By Traeger S. B. 884

A BILL TO BE ENTITLED

AN ACT

defining water and sewer utilities and providing for their regulation and declaring an emergency.

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

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short title

Section 1. This Act may be referred to as the "Water and Sewer Utility Regulatory Act."

Legislative policy and purpose

Section 2. This Act is enacted to protect the public interest inherent in the rates and services of water and sewer utilities. The legislature finds that water and sewer utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore water and sewer utility rates, operations and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task

of regulating water and sewer utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Definitions

Section 3. (1) The term "person," when used in this Act, 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, as herein defined.

(b) The term "municipality," when used in this Act, includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(c) The term "water and sewer utility," "public utility," or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or 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 city, town or other political subdivision of this state or a water supply or sewer service corporation. The term "water and sewer utility" or "utility" shall not

include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others.

(d) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any water or utility for any service, product, or commodity described in Subdivision (c) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(e) The word "commission," when used in this Act, means the Texas Water Commission, as created and constituted by Acts 1977, 65th Leg. R.S., Ch. 870, p. 2207.

(f) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the Texas Water Commission, or the governing body of any municipality.

(g) "Affected person" means any 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 utility with respect to any service performed by the utility or that desires to enter into competition.

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

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

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

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

(4) 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, 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 such securities;

(5) 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;

(6) any person or corporation that the 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 such power is established through ownership or voting of securities or by any other direct or indirect means; or

(7) any person or corporation that the commission, after notice and hearing determines is actually or exercising such substantial influence over the policies and

action 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 with such within the meaning of this section, even though no one of them alone is so affiliated.

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

(k) "Commissioner" means a member of the Texas Water Commission.

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

(m) "Facilities" means all the plant and equipment of a 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 utility.

(n) "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.

(o) "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.

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

(q) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by utilities in the performance of their duties under this Act to their patrons, employees, other utilities, and the public, as well as the interchange of facilities between two or more of them.

(r) "Test year" means the most recent 12 months for which operating data for a utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(s) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended, (Article 1434a, Vernon's Texas Civil Statutes).

Applicability of Administrative Procedure
and Texas Register Act

Section 4. The Administrative Procedure and Texas Register Act, Article 6252-13a, Vernon's Texas Civil Statutes, applies to all proceedings under this Act except to the extent inconsistent with this Act.

ARTICLE II. ORGANIZATION OF COMMISSION

Section 5. The Texas Water Commission, as created and mplemented by the Texas Water Code, Chapter 5, Subchapter G, Acts 1977, 65th Leg. R.S., Ch. 870, p. 2207) implement the owers and duties in this Act.

Section 6. Prohibited activities. (a) No person is eligible for appointment as a commissioner if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of $10,000, or more in a utility or any affiliated interest.

(b) No commissioner or employee of the commission may do any of the following during his period of service with the commission and for two years thereafter:

(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any utility or affiliated interest, or in any person or corporation or other business entity a significant portion of whose business consists of furnishing goods or services to utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous constributions of money, property or services;

(2) own or control any securities in a utility or affiliated interest, either directly or indirectly;

(3) accept any gift, gratuity, or entertainment whatsoever from any utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business

entity a significant portion of whose business consists of furnishing goods or services to utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission whose cumulative value in any one-year period is less than $100 shall not constitute a violation of this Act.

(c) The prohibited activities of this section do not include contracts for utility products and services or equipment for use of utility products when a member or employee of the commission is acting as a consumer.

(d) No commissioner or employee of the commission may directly or indirectly solicit or request from or suggest or recommend to, any utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such utility or affiliated interest.

(e) No utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission except as allowed by Subdivision (3) of Subsection

(b) of this section, nor may any such utility or affiliated interest or any such person, corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

(f) It shall not be a violation of this section if a member of the commission or a person employed by the commission, upon becoming the owner of any stocks or bonds or other pecuniary interest in a utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a "pecuniary interest" includes income, compensation and payment of any kind, in addition to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner or employee.

(g) Unless specifically authorized by this Act for disposition of ex parte matters, no member or employee of the commission assigned to render a decision or to make findings of fact and conclusions of law in a proceeding may communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate. 4/5

(h) No member of the commission may seek nomination or election to any other civil office of the State of Texas or of

the United States while he is a commissioner. If any member of the commission files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

Employees

Section 7. (a) The commission shall employ such officers, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, commission employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.

(b) The commission shall employ:

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(c) The general counsel and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities under the jurisdiction of the commission;

(4) preparation of proposed changes in the rules of the commission;

(5) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(6) preparation of recommendations and a report of such staff for inclusion in the annual report of the commission;

(7) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(8) such other activities as are reasonably necessary to enable him to perform his duties.

Orders; transcript and exhibits; public records

Section 8. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters

which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252--17a, Vernon's Texas Civil Statutes).

Annual report

Section 9. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth such other information concerning the operations of the commission and the water and sewer utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

Attorney General to represent commission

Section 10. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts, and any court of the United States.

ARTICLE III. JURISDICTION

General power; rules; hearings

Section 11. The commission has the general power to regulate and supervise the business of every water and sewer utility within its jurisdiction and to do all things, whether

specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The 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 the provisions of this Act or the rules, orders, or other actions of the commission.

Jurisdiction of municipality; surrender; original and appellate jurisdiction of commission

Section 12. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over water or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or ten percent of the number of qualified

voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time, by vote of the electorate, reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

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

(e) The 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 Act.

Municipality owned utilities

Section 13. Nothing in this article shall be construed to confer on the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate land, supervise

water and sewer utilities within their boundaries, except as provided in this Act.

ARTICLE IV. MUNICIPALITIES

Franchises

Section 14. Nothing in this Act shall 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 the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

Local utility service; exempt and nonexempt areas

Section 15. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act 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 commission, or other standards and rules not inconsistent therewith. Notwithstanding any such election, the 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 Act, 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. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

Rate determination

Section 16. Any municipality regulating its water and sewer utilities pursuant to this Act 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 such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Authority of governing body; cost reimbursement

Section 17. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on

water and sewer utility ratemaking proceedings; and the water and sewer utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services.

Assistance by commission

Section 18. The commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such assistance may include aid to municipalities in connection with matters pending before the commission, or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence to them.

Appeal

Section 19. (a) Any party to a rate proceeding before the governing body of a municipality may apeal the decision of the governing body to the commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission and copies served on all parties to the original rate proceeding.

(d) The commission shall hear such appeal de novo and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

Records of utility; rates, methods and accounts

Section 20. (a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission uniform accounts of all business transacted. The commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this Act. In the case of any utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission; provided, however, that the 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 commission for a utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(b) The 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 such rates and methods and with such

other rules and regulations as the commission prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

(c) 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. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such utility, to the extent that such merchandise is not integral to the provision of utility service.

(d) 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 commission and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of such methods 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 such benefits between consumers and the utilities accordingly. Where any portion of the investment tax credit has been retained by a utility, that same 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.

(f) For the purposes of this section, "utility" includes "municipally owned utility."

Powers of commission

Section 21. (a) The commission shall have the power to:

(1) require that water and sewer utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(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 fo any contract or arrangement between any utility and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(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) 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.

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

Inspections; examination under oath; compelling production of records; inquiry into management and affairs

Section 22. (a) Any regulatory authority, and when

authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting such investigation to examine under oath, any officer, agent, or employee of any utility in connection with such investigation. 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 in lieu thereof if the commission so orders. Any utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b) (1) 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 Act.

(2) 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.

(3) 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 commencing an inspection, examination, or test.

(c) 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 the same are conducted.

Reporting of advertising or public relations expenses

Section 23. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which 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 rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Unlawful rates, rules and regulations

Section 24. It shall be unlawful for any utility to charge, collect, or receive any rate for utility service or to impose any rule or regulation other than as herein provided.

Filing schedule of rates, rules and regulations

Section 25. Every utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any utility service, product, or commodity offered by the utility. Every utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by such utility.

Office of utility; records; removal from state

Section 26. Every utility shall have an office in a county of this state in which its property or some part thereof is

located in which it shall keep all books, accounts, records, and memoranda required by the commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission.

Communications by utilities with regulatory authority; regulations and records

Section 27. (a) The regulatory authority shall prescribe regulations governing communications by utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of service

Section 28. (a) Every utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all utilities with respect to the service to be furnished; 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; prescribe

reasonable regulations for the examination and testing of the service and for the measurement thereof; and 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 service of any utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the utility or until changed by the regulatory authority as herein provided.

Examination and test of equipment

Section 29. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any utility and may enter any premises occupied by any utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The utility shall have the right to be represented at the making of the examinations, tests, and inspections. 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 the duties aforesaid.

(b) Any consumer or user may have any 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 such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such 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 such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

Power to insure compliance; rate regulation

Section 29. Subject to the provisions of this Act, the commission is hereby vested with all authority and power of the State of Texas to insure compliance with the obligations of utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of water and sewer utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

Just and reasonable rates

Section 30. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any utility, or by any two or more 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 consumers. For ratemaking purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission deems such treatment to be appropriate.

Fixing overall revenues

Section 31. In fixing the rates of a utility the regulatory authority shall fix its overall revenues at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

Fair return; burden of proof

Section 32. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof 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 shall be on the utility.

Components of adjusted value of invested capital and net income

Section 33. The components of adjusted value of invested capital and net income shall be determined according to the following rules:

(a) Adjusted Value of Invested Capital. Utility rates shall be based upon the adjusted value of property used by and useful to the utility in providing service including where necessary to the financial integrity of the utility construction

work in progress at cost as recorded on the books of the utility. The adjusted value of such property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority shall have the discretion to determine a reasonable balance that reflects not less than 60% nor more than 75% original cost, that 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 which is the present owner or by a predcessor, less depreciation, and not less than 25% nor more than 40% current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the utility to attract new capital in determining a reasonable balance.

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

(c) Net Income. By "net income" is meant the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall 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.

(2) Income Taxes. 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 so 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 by reason of 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 the property or services so purchased. 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 such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

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

Unreasonable or violative existing rates; investigating costs of obtaining service from another source

Section 35. Whenever 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 provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the utility; and such rates shall constitute the legal rates of the utility until changed as provided in this Act. Whenever a utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such utility.

Statement of intent to change rates; major changes; hearing; suspension of rate schedule; determination of rate level

Section 35. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a newspaper having general

circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations. Provided, however, nothing in this subsection shall apply to a water or sewer utility that:

(1) has fewer than 150 customers; and

(2) is not a member of a group filing a consolidated tax return; and

(3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35-day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the regulatory authority any schedule modifying or resulting in a change in any rates then in force, the regulatory authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities

and counties, enter on a hearing to determine the propriety of such change. The regulatory authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the regulatory authority finds that a longer time will be required for a final determination, the regulatory authority may further extend the period for an additional 30 days. If the regulatory authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the regulatory authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the regulatory authority shall establish a temporary rate. The regulatory authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the regulatory authority finds the rates to be unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

(g) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected

since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

Rates for areas not within municipality

Section 3~~6~~7. Water and sewer utility rates for areas not within any municipality shall not exceed without commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable preference or prejudice as to rates or services

Section 3~~7~~8. No water and sewer utility may, as to rates or services, 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. No utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Equality of rates and services

Section 3~~8~~9. No water and sewer utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided in this Act, nor may any person 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 upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall 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.

Discrimination; restriction on competition

Section 39. No water and sewer utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, nor may any utility engage in any other practice that tends to restrict or impair such competition.

Payments in lieu of taxes

Section 40. No payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may 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.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

Definitions

Section 41. For the purposes of this article only: (a) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation, now or

hereafter operating, maintaining, or controlling in Texas facilities for providing retail water and sewer utility service.

(b) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation providing utility services other than water and sewer services and who are under the jurisdiction of the Railroad Commission or the Public Utility Commission of Texas after the effective date of this Act. For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

Certificate required

Section 42. Upon the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Exceptions for extension of service

Section 4~~3~~. (a) A 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 and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(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; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Application; maps; evidence and consent

Section 5~~4~~. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

(c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to

show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Prior construction or operation

Section 46. On application made to the commission, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility or retail public utility actually providing service to any geographical area on September 1, 1975, or to any person or corporation actively engaged on September 1, 1975, in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

Notice and hearing; issuance or refusal; factors considered

Section 47. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 45, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated

system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

Area included within city, town or village

Section 48. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of

streets by giving to the 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 cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Article 11.03, Title 122A, Taxation--General, Revised Civil Statutes of Texas, 1925, as amended.

Contracts valid and enforceable

Section 49. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

Preliminary order for certificate

Section 50. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue

the certificate. Continuous and adequate service; discontinuance, reduction or impairment of service.

Section 5~~0~~1. (a) The holder of any 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 commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

(1) nonpayment of charges;

(2) nonuse; or

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

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

Sale, assignment or lease of certificate

Section 5~~1~~2. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Interference with other public utility

Section 5~~2~~3. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any

other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

Improvements in service; interconnecting service

Section 5~~3~~4. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service; and

(2) order two or more public utilities to establish specified facilities for the interconnecting service.

Revocation or amendment of certificate

Section 5~~4~~5. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

Report of sale, merger, etc.; investigation; disallowance of transaction

Section 5~~5~~6. No utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000 or merge or consolidate

with another utility operating in this state unless the utility reports such transaction to the commission within a reasonable time. On the filing of a report with the commission, the commission shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission finds that such transactions are not in the public interest, the commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the utility by construction.

Purchase of voting stock in another public utility: report

Section 5~~6~~7. No utility may purchase voting stock in another utility doing business in Texas, unless the utility reports such purchase to the commission.

Loans to stockholders: report

Section 5~~7~~8. No utility may 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 commission within a reasonable time.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

Jurisdiction over affiliated interests

Section 58. The commission shall have jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of such 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 such transactions.

Disclosure of substantial interest in voting securities

Section 59. The 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.

ARTICLE X. JUDICIAL REVIEW

Right to judicial review; evidence

Section 60. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

Costs and attorneys' fees

Section 61. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its

efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harrassment, the court may award to the defendant utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

Action to enjoin or require compliance

Section 63. Whenever it appears to the commission that any utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission entered or adopted under the provisions of this Act, or that any utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against such utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

Receivership

Section 64. (a) At the request of 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 violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or 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) Upon 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.

Payment of costs of receivership

Sectin 65. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of real or personal property, or any part thereof, of a water or sewer utility against which a proceeding has been brought under this article for the purpose of paying for the costs incurred in the operation of the receivership. Said costs shall include but are not limited to the payment of fees to the receiver for his services; payment of fees to attorneys, accountants, engineers, or any other person or entity which provides goods or services necessary to the operation of the receivership; payment of costs incurred in

ensuring any property owned or controlled by a water or sewer utility is not used in violation of a final order of the commission.

Penalty against utility or affiliated interest

Section 6. (a) Any utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or decree or judgment of a court, shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each offense.

(b) A utility or affiliated interest commits a separate offense each day it continues to violate the provisions of 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 commission, in a court of competent jurisdiction to recover the penalty under this section.

Penalty for violating section 6 of this Act

Section 7. (a) Any member of the commission, or any officer or director of a utility or affiliated interest, shall be subject to a civil penalty of $1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

(b) Any person, other than an officer or director of a utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of $500 for each and every

knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

Personal penalty

Section 67. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any utility or any officer, director, agent, or employee thereof or any other corporation or person.

Contempt proceedings

Section 68. If any person fails to comply with any lawful order of 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 commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of fines and penalties

Section 69. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission

and paid by the commission to the state treasury to be placed in the general revenue fund.

Venue

Section 70. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

Assessments upon public utilities

Section 71. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

Payment dates; delinquency

Section 72. All assessments shall be due on August 31 of each year. Any utility may instead make quarterly payments due on August 31, November 30, February 28, and May 31 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of six percent per annum on the assessment and panelty due.

Collection and payment into general revenue fund

Section 73. All fees, penalties, and interest paid under

the provision of Sections 71 and 72 of this article shall be collected by the comptroller of public accounts and paid into the general revenue fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 71 when made.

Approval of budget

Section 74. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

Accounting records; audit

Section 75. The commission shall keep such accounting records as required by the state auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

Complaint by any affected person

Section 76. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Record of proceedings; right to hearing

Section 77. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

Judicial stay or suspension of order, ruling or decision

Section 78. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the

case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

Assumption of jurisdiction

Section 79. The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act or September 1, 1983.

Certain water and sewer utility property included in rate base; valuation used; depreciation expense

Section 80. (a) The provisions of this section apply notwithstanding any other provision of this Act.

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

(c) Depreciation expense included in cost of service shall include depreciation or all currertly used, depreciable utility property owned by the utility.

Effective date

Section 81. this Act shall become effective or September 1, 1983, and the commission shall thereupon exercise the powers and duties conferred upon it as provided in this Act.

Liberal corstruction

Section 8~~2~~3. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of water and sewer utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

Repealer

Section 8~~3~~4. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes); Article 1446c, Vernon's Texas Civil Statutes, 1980, as amended, and all other laws and parts of laws to the extent that same conflict with this Act are repealed effective September 1, 1983.

(b) Nothing in this Act shall affect the jurisdiction of the commission or the Texas Department of Water Resources otherwise afforded under Texas Water Code §§11.036, 11.041, 12.013, and 50.275.

Severability

Section 8~~4~~5. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 8~~5~~6. The transfer of water and sewer utility regulation from the Public utility Commission of Texas to the Texas Water Commission shall 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 such prior action or authority shall be treated as still remainirg in force pertainirg to water and sewer utilities for the purpose of sustainirg any proper action concernirg such obligation, right, permit, license, standard or requirement, or penalty. No judicial action or proceeding commenced prior to the effective date of this Act shall be affected by its enactmert.

Section 8~~6~~7. ~~Or~~ ON the effective date of this Act, all equipment, data, documents, facilities, and other items pertaining to water ard sewer utilities of the Public Utility Commission of Texas shall be transferred to the Texas Water Commission.

Section 8~~7~~8. Or the effective date of this Act the Texas Water Commission shall implement the powers and duties delegated to it. The commission is authorized, to the extent it deems advisable and under such terms ard conditions deemed necessary and desirable, to contract with the Public Utility Commission of Texas to provide for the disposition of any and all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas or on the effective date of this Act, 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 ~~or~~ on the pending water and sewer utility matters consistent with the provisions of this Act. Any matter that requires a final decision, however, shall be reduced to a written proposal for decision conforming to the requirements of Article 6252-13a, Vernon's Texas Civil Statutes, which, together with the record, shall be tendered to the Texas Water Commission for final decision.

Section 8~~8~~9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

By: Traeger S.B. No. 884

(In the Senate - Filed March 9, 1983; March 10, 1983, read first time and referred to Committee on Intergovernmental Relations; March 24, 1983, reported favorably, as amended; March 24, 1983, sent to printer.)

COMMITTEE AMENDMENT NO. 1 By: Traeger

Amend Senate Bill 884, SECTION 85, to read as follows:

SECTION 85. The purpose of this Act is to transfer water and sewer utility regulation existing under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) to the Texas Water Commission, and nothing herein is intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of that exercised by the Public Utility Commission of Texas prior to the effective date of this Act. Further, nothing herein is intended to affect the jurisdiction and responsibilities for water rate regulation presently vested in the Texas Water Commission under Title 2 of the Texas Water Code. The transfer of water and sewer utility regulation from the Public Utility Commission of Texas to the Texas Water Commission shall 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 such prior action or authority shall be treated as still remaining 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 commenced prior to the effective date of this Act shall be affected by its enactment.

A BILL TO BE ENTITLED
AN ACT

defining water and sewer utilities and providing for their regulation and declaring an emergency.

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

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short title

SECTION 1. This Act may be referred to as the "Water and Sewer Utility Regulatory Act."

Legislative policy and purpose

SECTION 2. This Act is enacted to protect the public interest inherent in the rates and services of water and sewer utilities. The legislature finds that water and sewer utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore water and sewer utility rates, operations and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating water and sewer utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Definitions

SECTION 3. (1) The term "person," when used in this Act, 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, as herein defined.

(b) The term "municipality," when used in this Act, includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(c) The term "water and sewer utility," "public utility," or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or

sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or 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 city, town or other political subdivision of this state or a water supply or sewer service corporation. The term "water and sewer utility" or "utility" shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others.

(d) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any water or utility for any service, product, or commodity described in Subdivision (c) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(e) The word "commission," when used in this Act, means the Texas Water Commission, as created and constituted by Acts 1977, 65th Leg. R.S., Ch. 870, p. 2207.

(f) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the Texas Water Commission, or the governing body of any municipality.

(g) "Affected person" means any 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 utility with respect to any service performed by the utility or that desires to enter into competition.

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

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

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

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

(4) 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, 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 such securities;

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

(6) any person or corporation that the 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 such power is established through ownership or voting of securities or by any other direct or indirect means; or

(7) any person or corporation that the commission, after notice and hearing determines is actually or exercising such substantial influence over the policies and action 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 with such within the

meaning of this section, even though no one of them alone is so affiliated.

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

(k) "Commissioner" means a member of the Texas Water Commission.

(l) "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 shall not include municipal corporations unless expressly provided otherwise in this Act.

(m) "Facilities" means all the plant and equipment of a 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 utility.

(n) "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.

(o) "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.

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

(q) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by utilities in the performance of their duties under this Act to their patrons, employees, other utilities, and the public, as well as the interchange of facilities between two or more of them.

(r) "Test year" means the most recent 12 months for which operating data for a utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(s) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

Applicability of Administrative Procedure
and Texas Register Act

SECTION 4. The Administrative Procedure and Texas Register Act, Article 6252-13a, Vernon's Texas Civil Statutes, applies to all proceedings under this Act except to the extent inconsistent with this Act.

ARTICLE II. ORGANIZATION OF COMMISSION

SECTION 5. The Texas Water Commission, as created and implemented by the Texas Water Code, Chapter 5, Subchapter G, (Acts 1977, 65th Leg. R.S., Ch. 870, p. 2207) implement the powers and duties in this Act.

SECTION 6. Prohibited activities. (a) No person is eligible for appointment as a commissioner if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of $10,000, or more in a utility or any affiliated interest.

(b) No commissioner or employee of the commission may do any of the following during his period of service with the commission

and for two years thereafter:

(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any utility or affiliated interest, or in any person or corporation or other business entity a significant portion of whose business consists of furnishing goods or services to utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous constributions of money, property or services;

(2) own or control any securities in a utility or affiliated interest, either directly or indirectly;

(3) accept any gift, gratuity, or entertainment whatsoever from any utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business entity a significant portion of whose business consists of furnishing goods or services to utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission whose cumulative value in any one-year period is less than $100 shall not constitute a violation of this Act.

(c) The prohibited activities of this section do not include contracts for utility products and services or equipment for use of utility products when a member or employee of the commission is acting as a consumer.

(d) No commissioner or employee of the commission may directly or indirectly solicit or request from or suggest or recommend to, any utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such utility or affiliated interest.

(e) No utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission except as allowed by Subdivision (3) of Subsection (b) of this section, nor may any such utility or affiliated interest or any such person, corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

(f) It shall not be a violation of this section if a member of the commission or a person employed by the commission, upon becoming the owner of any stocks or bonds or other pecuniary interest in a utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a "pecuniary interest" includes income, compensation and payment of any kind, in addition to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner or employee.

(g) Unless specifically authorized by this Act for disposition of ex parte matters, no member or employee of the commission assigned to render a decision or to make findings of fact and conclusions of law in a proceeding may communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

(h) No member of the commission may seek nomination or election to any other civil office of the State of Texas or of the United States while he is a commissioner. If any member of the commission files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

Employees

SECTION 7. (a) The commission shall employ such officers, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, commission employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.

(b) The commission shall employ:

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(c) The general counsel and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities under the jurisdiction of the commission;

(4) preparation of proposed changes in the rules of the commission;

(5) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(6) preparation of recommendations and a report of such staff for inclusion in the annual report of the commission;

(7) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(8) such other activities as are reasonably necessary to enable him to perform his duties.

Orders; transcript and exhibits; public records

SECTION 8. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252--17a, Vernon's Texas Civil Statutes).

Annual report

SECTION 9. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth such other information concerning the operations of the commission and the water and sewer utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

Attorney General to represent commission

SECTION 10. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts, and any court of the United States.

ARTICLE III. JURISDICTION

General power; rules; hearings

SECTION 11. The commission has the general power to regulate and supervise the business of every water and sewer utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The 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 the provisions of this Act or the rules, orders, or other actions of the commission.

Jurisdiction of municipality; surrender; original and appellate jurisdiction of commission

SECTION 12. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over water or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or ten percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time, by vote of the electorate, reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

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

(e) The 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 Act.

Municipality owned utilities

SECTION 13. Nothing in this article shall be construed to confer on the commission power or jurisdiction to regulate or

supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate land, supervise water and sewer utilities within their boundaries, except as provided in this Act.

ARTICLE IV. MUNICIPALITIES

Franchises

SECTION 14. Nothing in this Act shall 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 the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

Local utility service; exempt and nonexempt areas

SECTION 15. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act 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 commission, or other standards and rules not inconsistent therewith. Notwithstanding any such election, the 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 Act, 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. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

Rate determination

SECTION 16. Any municipality regulating its water and sewer utilities pursuant to this Act shall require from those utilities all neccessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Authority of governing body; cost reimbursement

SECTION 17. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings; and the water and sewer utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services.

Assistance by commission

SECTION 18. The commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such assistance may include aid to municipalities in connection with matters pending before the commission, or the courts, or before the governing body of any municipality, including making members of the staff available as

witnesses and otherwise providing evidence to them.

Appeal

SECTION 19. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission and copies served on all parties to the original rate proceeding.

(d) The commission shall hear such appeal de novo and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

Records of utility; rates, methods and accounts

SECTION 20. (a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission uniform accounts of all business transacted. The commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this Act. In the case of any utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission; provided, however, that the 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 commission for a utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(b) The 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 such rates and methods and with such other rules and regulations as the commission prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

(c) 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. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such utility, to the extent that such merchandise is not integral to the provision of utility service.

(d) 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 commission and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of such methods 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 such benefits between consumers and the utilities accordingly. Where any portion of the investment tax credit has been retained by a utility, that same 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.

(f) For the purposes of this section, "utility" includes "municipally owned utility."

Powers of commission

SECTION 21. (a) The commission shall have the power to:

(1) require that water and sewer utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(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. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(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) 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.

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

Inspections; examination under oath; compelling production of records; inquiry into management and affairs

SECTION 22. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting such investigation to examine under oath, any officer, agent, or employee of any utility in connection with such investigation. 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 in lieu thereof if the commission so orders. Any utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b) (1) 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 Act.

(2) 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.

(3) 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 commencing an inspection, examination, or test.

(c) 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 the same are conducted.

Reporting of advertising or public relations expenses

SECTION 23. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which 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 rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Unlawful rates, rules and regulations

SECTION 24. It shall be unlawful for any utility to charge, collect, or receive any rate for utility service or to impose any rule or regulation other than as herein provided.

Filing schedule of rates, rules and regulations

SECTION 25. Every utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any utility service, product, or commodity offered by the utility. Every utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by such utility.

Office of utility; records; removal from state

SECTION 26. Every utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission.

Communications by utilities with regulatory authority; regulations and records

SECTION 27. (a) The regulatory authority shall prescribe regulations governing communications by utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of service

SECTION 28. (a) Every utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all utilities with respect to the service to be furnished; 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; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and 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 service of any utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the utility or until changed by the regulatory authority as herein provided.

Examination and test of equipment

SECTION 29. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any utility and may enter any premises occupied by any utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The utility shall have the right to be represented at the making of the examinations, tests, and inspections. 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 the duties aforesaid.

(b) Any consumer or user may have any 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 such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such 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 such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

Power to insure compliance; rate regulation

SECTION 30. Subject to the provisions of this Act, the commission is hereby vested with all authority and power of the State of Texas to insure compliance with the obligations of utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of water and sewer utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

Just and reasonable rates

SECTION 31. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any utility, or by any two or more 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 consumers. For ratemaking purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission deems such treatment to be appropriate.

Fixing overall revenues

SECTION 32. In fixing the rates of a utility the regulatory authority shall fix its overall revenues at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

Fair return; burden of proof

SECTION 33. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof 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 shall be on the utility.

Components of adjusted value of invested capital and net income

SECTION 34. The components of adjusted value of invested capital and net income shall be determined according to the following rules:

(a) Adjusted Value of Invested Capital. Utility rates shall be based upon the adjusted value of property used by and useful to the utility in providing service including where necessary to the financial integrity of the utility construction work in progress at cost as recorded on the books of the utility. The adjusted value of such property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority shall have the

discretion to determine a reasonable balance that reflects not less than 60% nor more than 75% original cost, that 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 which is the present owner or by a predecessor, less depreciation, and not less than 25% nor more than 40% current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the utility to attract new capital in determining a reasonable balance.

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

(c) Net Income. By "net income" is meant the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall 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.

(2) Income Taxes. 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 so 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 by reason of 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 the property or services so purchased. 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 such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

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

Unreasonable or violative existing rates; investigating costs of obtaining service from another source

SECTION 35. Whenever 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 provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the utility; and such rates shall constitute the legal rates of the utility until changed as provided in this Act. Whenever a utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such utility.

Statement of intent to change rates; major changes; hearing; suspension of rate schedule; determination of rate level

SECTION 36. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations. Provided, however, nothing in this subsection shall apply to a water or sewer utility that:

(1) has fewer than 150 customers; and

(2) is not a member of a group filing a consolidated tax return; and

(3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35-day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the regulatory authority any schedule modifying or resulting in a change in any rates then in force, the regulatory authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The regulatory authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the regulatory authority finds that a longer time will be required for a final determination, the regulatory authority may further extend the period for an additional 30 days. If the regulatory authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the regulatory authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the regulatory authority shall establish a temporary rate. The regulatory authority shall give preference to the hearing and

decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the regulatory authority finds the rates to be unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

(g) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

Rates for areas not within municipality

SECTION 37. Water and sewer utility rates for areas not within any municipality shall not exceed without commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable preference or prejudice as to rates or services

SECTION 38. No water and sewer utility may, as to rates or services, 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. No utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Equality of rates and services

SECTION 39. No water and sewer utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided in this Act, nor may any person 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 upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall 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.

Discrimination; restriction on competition

SECTION 40. No water and sewer utility may discriminate

against any person or corporation that sells or leases equipment or performs services in competition with the utility, nor may any utility engage in any other practice that tends to restrict or impair such competition.

Payments in lieu of taxes

SECTION 41. No payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may 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.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

Definitions

SECTION 42. For the purposes of this article only:

(a) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail water and sewer utility service.

(b) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation providing utility services other than water and sewer services and who are under the jurisdiction of the Railroad Commission or the Public Utility Commission of Texas after the effective date of this Act. For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

Certificate required

SECTION 43. Upon the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Exceptions for extension of service

SECTION 44. (a) A 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 and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(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; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Application; maps; evidence and consent

SECTION 45. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map

or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

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

Prior construction or operation

SECTION 46. On application made to the commission, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility or retail public utility actually providing service to any geographical area on September 1, 1975, or to any person or corporation actively engaged on September 1, 1975, in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

Notice and hearing; issuance or refusal; factors considered

SECTION 47. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 45, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

Area included within city, town or village

SECTION 48. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the 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 cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Article 11.03, Title 122A, Taxation--General, Revised Civil Statutes of Texas, 1925, as amended.

Contracts valid and enforceable

SECTION 49. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

Preliminary order for certificate

SECTION 50. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Continuous and adequate service; discontinuance, reduction or impairment of service.

SECTION 51. (a) The holder of any 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 commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

(1) nonpayment of charges;

(2) nonuse; or

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

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

Sale, assignment or lease of certificate

SECTION 52. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Interference with other public utility

SECTION 53. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

Improvements in service; interconnecting service

SECTION 54. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service; and

(2) order two or more public utilities to establish specified facilities for the interconnecting service.

Revocation or amendment of certificate

SECTION 55. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

Report of sale, merger, etc.; investigation;

disallowance of transaction

SECTION 56. No utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000 or merge or consolidate with another utility operating in this state unless the utility reports such transaction to the commission within a reasonable time. On the filing of a report with the commission, the commission shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission finds that such transactions are not in the public interest, the commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the utility by construction.

Purchase of voting stock in another public utility: report

SECTION 57. No utility may purchase voting stock in another utility doing business in Texas, unless the utility reports such purchase to the commission.

Loans to stockholders: report

SECTION 58. No utility may 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 commission within a reasonable time.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

Jurisdiction over affiliated interests

SECTION 59. The commission shall have jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of such 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 such transactions.

Disclosure of substantial interest in voting securities

SECTION 60. The 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.

ARTICLE X. JUDICIAL REVIEW

Right to judicial review; evidence

SECTION 61. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

Costs and attorneys' fees

SECTION 62. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harrassment, the court may award to the defendant utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

Action to enjoin or require compliance

SECTION 63. Whenever it appears to the commission that any utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission entered or adopted

under the provisions of this Act, or that any utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against such utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

Receivership

SECTION 64. (a) At the request of 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 violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or 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) Upon 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.

Payment of costs of receivership

SECTION 65. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of real or personal property, or any part thereof, of a water or sewer utility against which a proceeding has been brought under this article for the purpose of paying for the costs incurred in the operation of the receivership. Said costs shall include but are not limited to the payment of fees to the receiver for his services; payment of fees to attorneys, accountants, engineers, or any other person or entity which provides goods or services necessary to the operation of the receivership; payment of costs incurred in ensuring any property owned or controlled by a water or sewer utility is not used in violation of a final order of the commission.

Penalty against utility or affiliated interest

SECTION 66. (a) Any utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or decree or judgment of a court, shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each offense.

(b) A utility or affiliated interest commits a separate offense each day it continues to violate the provisions of 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 commission, in a court of competent jurisdiction to recover the penalty under this section.

Penalty for violating Section 6 of this Act

SECTION 67. (a) Any member of the commission, or any officer or director of a utility or affiliated interest, shall be subject to a civil penalty of $1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

(b) Any person, other than an officer or director of a

utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of $500 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

Personal penalty

SECTION 68. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any utility or any officer, director, agent, or employee thereof or any other corporation or person.

Contempt proceedings

SECTION 69. If any person fails to comply with any lawful order of 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 commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of fines and penalties

SECTION 70. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission and paid by the commission to the state treasury to be placed in the general revenue fund.

Venue

SECTION 71. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

Assessments upon public utilities

SECTION 72. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

Payment dates; delinquency

SECTION 73. All assessments shall be due on August 31 of each year. Any utility may instead make quarterly payments due on August 31, November 30, February 28, and May 31 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of six percent per annum on the assessment and penalty due.

Collection and payment into general revenue fund

SECTION 74. All fees, penalties, and interest paid under the provision of Sections 71 and 72 of this article shall be collected by the comptroller of public accounts and paid into the general revenue fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 71 when made.

Approval of budget

SECTION 75. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

Accounting records; audit

SECTION 76. The commission shall keep such accounting records as required by the state auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

Complaint by any affected person

SECTION 77. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Record of proceedings; right to hearing

SECTION 78. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

Judicial stay or suspension of order, ruling or decision

SECTION 79. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

Assumption of jurisdiction

SECTION 80. The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on September 1, 1983.

Certain water and sewer utility property included in rate base; valuation used; depreciation expense

SECTION 81. (a) The provisions of this section apply notwithstanding any other provision of this Act.

(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all ratemaking formulae and 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 shall be considered invested capital and shall not be considered contributors in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation or all currently used, depreciable utility property owned by the utility.

Effective date

SECTION 82. This Act shall become effective on September 1, 1983, and the commission shall thereupon exercise the powers and duties conferred upon it as provided in this Act.

Liberal construction

SECTION 83. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of water and sewer utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

Repealer

SECTION 84. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes); Article 1446c, Vernon's Texas Civil Statutes, 1980, as amended, and all other laws and parts of laws to the extent that same conflict with this Act are repealed effective September 1, 1983.

(b) Nothing in this Act shall affect the jurisdiction of the commission or the Texas Department of Water Resources otherwise afforded under Texas Water Code Sections 11.036, 11.041, 12.013, and 50.275.

Severability

SECTION 85. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are

declared to be severable.

SECTION 86. The transfer of water and sewer utility regulation from the Public Utility Commission of Texas to the Texas Water Commission shall 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 such prior action or authority shall be treated as still remaining 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 commenced prior to the effective date of this Act shall be affected by its enactment.

SECTION 87. On the effective date of this Act, all equipment, data, documents, facilities, and other items pertaining to water and sewer utilities of the Public Utility Commission of Texas shall be transferred to the Texas Water Commission.

SECTION 88. On the effective date of this Act the Texas Water Commission shall implement the powers and duties delegated to it. The commission is authorized, to the extent it deems advisable and under such terms and conditions deemed necessary and desirable, to contract with the Public Utility Commission of Texas to provide for the disposition of any and all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas on the effective date of this Act, 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 the provisions of this Act. Any matter that requires a final decision, however, shall be reduced to a written proposal for decision conforming to the requirements of Article 6252-13a, Vernon's Texas Civil Statutes, which, together with the record, shall be tendered to the Texas Water Commission for final decision.

SECTION 89. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

* * * * *

Austin, Texas
March 24, 1983

Hon. William P. Hobby
President of the Senate

Sir:

We, your Committee on Intergovernmental Relations to which was referred S.B. No. 884, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, as amended, and be printed.

Traeger, Chairman

AMENDMENT NO. 1 BY Fraser

Amend SB 884, section 85, to read as follows:

Section 85. The purpose of this act is to transfer water and sewer utility regulation existing under the Public Utility Regulatory Act, (Article 1446c, Vernon's Texas Civil Statutes), to the Texas Water Commission, and nothing herein is intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of that exercised by the Public Utility Commission of Texas prior to the effective date of this act. Further, nothing herein is intended to affect the jurisdiction and responsibilities for water rate regulation presently vested in the Texas Water Commission under Title 2 of the Texas Water Code. The transfer of water and sewer utility regulation from the Public Utility Commission of Texas to the Texas Water Commission shall 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 such prior action or authority shall be treated as still remaining 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 commenced prior to the effective date of this act shall be affected by its enactment.

ADOPTED

MAY 5 1983

Betty King
Secretary of the Senate

3/24/83

Com. am. #1
3/24/83

Rec
5-29-83

AMENDMENT NO. _____ BY _____

Amend SB 884 so as to delete Sections 6 and 7 from the bill and renumber the remaining sections.

Floor am. #1

AMENDMENT NO. 1 BY _____

Amend SB 884 so as to delete Sections 6 and 47 from the bill and renumber the remaining sections.

prohibited activities

personal penalty civil penalties left

AMENDMENT NO. 1 BY Jraeger

Amend SB 884 so as to delete Sections 6 and 67 from the bill and renumber the remaining sections.

ADOPTED

MAY 5 1983

Betty King
Secretary of the Senate

Rec
5-29-83

AMENDMENT NO. _____ BY _____

Amend SB 884 so that Section 7 of the act will read as follows:

Section 6. Employees. (a) The commission shall employ such hearing examiners, clerical staff, and other employees as it deems necessary to carry out the provisions of this act.

(b) The executive director of the Texas Department of Water Resources shall employ such investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as the executive director deems necessary to carry out the provisions of this act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, the employees shall be paid the same salary as employees of the Railroad Commission of Texas holding comparable positions. 7/8

(c) The executive director of the Texas Department of Water Resources shall employ:

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

Floor Am. #2

(d) The general counsel of the Texas Department of Water Resources and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the Texas Department of Water Resources and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities under the jurisdiction of the commission;

(4) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(5) preparation of recommendations and a report of the executive director of the Texas Department of Water Resources for inclusion in the annual report of the commission;

(6) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(7) such other activities as are reasonably necessary to enable him to perform his duties.

Engrossed 884

AMENDMENT NO. 2 BY _____

Amend SB 884 so that Section 7 of the act will read as follows:

Section 7. (a) The commission shall employ such hearing examiners, clerical staff and other employees as it deems necessary to carry out the provisions of this act.

(b) The executive director of the Texas Department of Water Resources shall employ such investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as the executive director deems necessary to carry out the provisions of this act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, the employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.

new (c) (The executive director of the Texas Department of Water Resources shall employ:)

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(d) The general counsel of the Texas Department of Water Resources and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the Texas Department of Water Resources and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities under the jurisdiction of the commission;

orig. 4 left out

(4) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(5) preparation of recommendations and a report of the executive director of the Texas Department of Water Resources for inclusion in the annual report of the commission;

(6) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(7) such other activities as are reasonably necessary to enable him to perform his duties.

Changes in caption to include "Texas Department of Water Resources and its director".

Floor
AMENDMENT NO. 2 BY Traeger

Amend SB 884 so that Section 7 of the act will read as follows:

Section 7. (a) The commission shall employ such hearing examiners, clerical staff and other employees as it deems necessary to carry out the provisions of this act.

(b) The executive director of the Texas Department of Water Resources shall employ such investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as the executive director deems necessary to carry out the provisions of this act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, the employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.

(c) The executive director of the Texas Department of Water Resources shall employ:

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

ADOPTED

MAY 5 1983

Betty King
Secretary of the Senate

(d) The general counsel of the Texas Department of Water Resources and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the Texas Department of Water Resources and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities under the jurisdiction of the commission;

(4) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(5) preparation of recommendations and a report of the executive director of the Texas Department of Water Resources for inclusion in the annual report of the commission;

(6) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(7) such other activities as are reasonably necessary to enable him to perform his duties.

FLOOR AMENDMENT #3

By TRAEGER

S.B. 884

Amend Section 72, S.B. 884, to read as follows:

Payment dates; delinquency

Section 72. All assessments shall be due on August 15 of each year. Any utility may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of ten percent per annum on the assessment and panelty due.

FLOOR AMENDMENT 3

By TRAEGER S.B. 884

Amend Section 72, S.B. 884, to read as follows:

Payment dates; delinquency

Section 72. All assessments shall be due on August 15 of each year. Any utility may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of ten percent per annum on the assessment and panelty due.

added assessments + fees in caption

FLOOR AMENDMENT

By TRAEGER S.B. 884

Amend Section 72, S.B. 884, to read as follows:

Payment dates; delinquency.

Section ~~72.~~ 71. All assessments shall be due on August 15 of each year. Any utility may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of ~~ten~~ 10 percent per annum on the assessment and penalty due.

Rec 5-29-83

5/5/83

Rec 5-29-83

ADOPTED

MAR 5 1983

Secretary of the Senate

Floor Amd #3

CWIP & Original Cost

Rec 5-29-83

Amendment _____ By _____

SB 884

Amend Section 33 of H.B. 1885 by striking all above subsection (b) of Section 33 and substituting in lieu thereof the following:

Components of invested capital and net income

¶ SECTION 33 ~~34~~ ~~Sec. 33.~~ The components of invested capital and net income shall be determined according to the following rules:

(a) Invested Capital. Utility rates shall be based upon the original cost of property used by and useful to the utility in providing service, including where 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 upon the demonstration by the utility, by clear and convincing evidence, that such inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned 25 or 26 managed. Invested capital 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 which is the present owner or by a predecessor, less depreciation.

This is Sen Capertons amendment and it is acceptable.

Jesse

5/5/83

Floor Am. #5

CWIP & Original Cost

Amendment 4 By _____

SB 884

Amend Section 33 of H.B. 1885 by striking all above subsection (b) of Section 33 and substituting in lieu thereof the following:

Components of invested capital
and net income

Sec. 33. The components of invested capital and net income shall be determined according to the following rules:

(a) Invested Capital. Utility rates shall be based upon the original cost of property used by and useful to the utility in providing service including where 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 upon the demonstration by the utility, by clear and convincing evidence, that such inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned or managed. Invested capital 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 which is the present owner or by a predecessor, less depreciation.

This is Sen Capertons amendment and it is acceptable.

Jesse

Floor Amendment # 4 By: [signature]

Amend Section 33 of S.B. 884 by striking all above subsection (b) of Section 33 and substituting in lieu thereof the following:

Components of invested capital
and net income

Sec. 33. The components of invested capital and net income shall be determined according to the following rules:

(a) Invested Capital. Utility rates shall be based upon the original cost of property used by and useful to the utility in providing service including where 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 upon the demonstration by the utility, by clear and convincing evidence, that such inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned or managed. Invested capital 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 which is the present owner or by a predecessor, less depreciation.

ADOPTED

MAY 5 1983

Betty King
Secretary of the Senate

AMEND THE CAPTION TO CONFORM

TO THE BODY OF THE BILL

ADOPTED

MAY 5 1983

Patty King

Secretary of the Senate

May 5 1983 Engrossed
Patsy Spaw
Engrossing Clerk

I certify that the attached is a true and correct copy of SB 884 which was received from the Senate on MAY 5 1983 and referred to the Committee on State Affairs
Chief Clerk of the House

By: Traeger
(Schlueter)

S.B. No. 884

A BILL TO BE ENTITLED

AN ACT

relating to the definition of water and sewer utilities and to their regulation; to the jurisdiction, powers and duties, and qualifications of members of the Texas Water Commission; to the jurisdiction and powers of municipalities and the Texas Department of Water Resources and its executive director; to the powers and duties of the general counsel; to rules and considerations for fixing or changing rates and for issuance of certificates of convenience and necessity; providing for hearings and for judicial review; providing for certain assessments and fees; providing enforcement procedures and penalties; repealing conflicting laws.

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

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

SECTION 1. Short Title. This Act may be cited as the "Water and Sewer Utility Regulatory Act."

SECTION 2. Legislative Policy and Purpose. This Act is enacted to protect the public interest inherent in the rates and services of water and sewer utilities. The legislature finds that water and sewer utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore water and sewer utility rates, operations, and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for

May 5 1983 Engrossed

Engrossing Clerk

I certify that the attached is a true and correct copy of S.B. 884, which was received from the Senate on MAY 5 1983 and was referred to the Committee on Natural Resources.

Chief Clerk of the House

By: Traeger
(Schlueter)

S.B. No. 884

A BILL TO BE ENTITLED

AN ACT

relating to the definition of water and sewer utilities and to their regulation; to the jurisdiction, powers and duties, and qualifications of members of the Texas Water Commission; to the jurisdiction and powers of municipalities and the Texas Department of Water Resources and its executive director; to the powers and duties of the general counsel; to rules and considerations for fixing or changing rates and for issuance of certificates of convenience and necessity; providing for hearings and for judicial review; providing for certain assessments and fees; providing enforcement procedures and penalties; repealing conflicting laws.

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

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

SECTION 1. Short Title. This Act may be cited as the "Water and Sewer Utility Regulatory Act."

SECTION 2. Legislative Policy and Purpose. This Act is enacted to protect the public interest inherent in the rates and services of water and sewer utilities. The legislature finds that water and sewer utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore water and sewer utility rates, operations, and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for

1 such competition. The purpose of this Act is to establish a
2 comprehensive regulatory system which is adequate to the task of
3 regulating water and sewer utilities as defined by this Act to
4 assure rates, operations, and services which are just and
5 reasonable to the consumers and to the utilities.
6 SECTION 3. Definitions.
7 (1) The term "person," when used in this Act includes
8 natural persons, partnerships of two or more persons having a joint
9 or common interest, mutual or cooperative associations, water
10 supply or sewer service corporations, and corporations, as herein
11 defined.
12 (2) The term "municipality," when used in this Act includes
13 cities and incorporated villages or towns existing, created, or
14 organized under the general, home-rule, or special laws of the
15 state.
16 (3) The term "water and sewer utility," "public utility," or
17 "utility" when used in this Act, includes any person, corporation,
18 river authority, cooperative corporation, or any combination
19 thereof, other than a municipal corporation or a water supply or
20 sewer service corporation, or their lessees, trustees, and
21 receivers, now or hereafter owning or operating for compensation in
22 this state equipment or facilities for the transmitting, storing,
23 distributing, selling, or furnishing of potable water to the public
24 or for resale to the public for any use or the collection,
25 transportation, treatment, or disposal of sewage or other operation
26 of a sewage disposal service for the public, other than equipment

or facilities owned and operated for either purpose by a city, town, or other political subdivision of this state or a water supply or sewer service corporation. The term "water and sewer utility" or "utility" shall 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 such employee service or tenancy, when such service or commodity is not resold to or used by others.

(4) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected whether directly or indirectly by any water or utility for any service, product, or commodity described in Subdivision (3) of this section and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(5) The word "commission," when used in this Act, means the Texas Water Commission, as created and constituted by Section 5.221, Water Code, as amended.

(6) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the Texas Water Commission or the governing body of any municipality.

(7) "Affected person" means any 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 utility with respect to any service performed by the utility or that desires to enter into competition.

(8) "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 such 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 of more of voting securities of a public utility;

(F) any person or corporation that the 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 such 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 commission, after notice and hearing, determines is actually exercising such substantial influence over the policies and action 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 with such within the meaning of this section, even though no one of them alone is so affiliated.

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

(10) "Commissioner" means a member of the Texas Water Commission.

(11) "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 shall not include municipal corporations unless expressly provided otherwise in this

Act.

(12) "Facilities" means all the plant and equipment of a 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 utility.

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

(16) "Service" is used in this Act in its broadest and most inclusive sense and includes any and all acts done, rendered, or performed and any and all things furnished or supplied and any and all facilities used, furnished, or supplied by utilities in the performance of their duties under this Act to their patrons, employees, other utilities, and the public, as well as the interchange of facilities between two or more of them.

(17) "Test year" means the most recent 12 months for which operating data for a utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(18) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

SECTION 4. Applicability of Administrative Procedure and Texas Register Act. The Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), applies to all proceedings under this Act except to the extent inconsistent with this Act.

ARTICLE II. ORGANIZATION OF COMMISSION

SECTION 5. The Texas Water Commission, as created and implemented by Section 5.221, Water Code, as amended, implement the powers and duties in this Act.

SECTION 6. Employees. (a) The commission shall employ such hearing examiners, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act.

(b) The executive director of the Texas Department of Water Resources shall employ such investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as the executive director deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, the employees shall be paid the same

salary as employees of the Railroad Commission of Texas holding comparable positions.

(c) The executive director of the Texas Department of Water Reosurces shall employ:

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(d) The general counsel of the Texas Department of Water Resources and his staff are responsible for the gathering of information relating to all matters within the authority of the commission. The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the Texas Department of Water Resources and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities

under the jurisdiction of the commission;

(4) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(5) preparation of recommendations and a report of the executive director of the Texas Department of Water Resources for inclusion in the annual report of the commission;

(6) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(7) such other activities as are reasonably necessary to enable him to perform his duties.

SECTION 7. Orders; Transcript and Exhibits; Public Records. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252--17a, Vernon's Texas Civil Statutes).

SECTION 8. Annual Report. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth

such other information concerning the operations of the commission and the water and sewer utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

SECTION 9. Attorney General to Represent Commission. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts and any court of the United States.

ARTICLE III. JURISDICTION

SECTION 10. General Power; Rules; Hearings. The commission has the general power to regulate and supervise the business of every water and sewer utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The 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 the provisions of this Act or the rules, orders, or other actions of the commission.

SECTION 11. Jurisdiction of Municipality; Surrender; Original and Appellate Jurisdiction of Commission. (a) Subject to the limitations imposed in this Act and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over water or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or 10 percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time by vote of the electorate reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may by vote of the electorate reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

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

(e) The 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 Act.

SECTION 12. Municipality-Owned Utilities. Nothing in this article shall be construed to confer on the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate land and supervise water and sewer utilities within their boundaries, except

as provided in this Act.

ARTICLE IV. MUNICIPALITIES

SECTION 13. Franchises. Nothing in this Act shall 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 the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

SECTION 14. Local Utility Service; Exempt and Nonexempt Areas. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act 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 commission or other standards and rules not inconsistent therewith. Notwithstanding any such election, the 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 Act 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. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 15. Rate Determination. Any municipality regulating its water and sewer utilities pursuant to this Act shall require from those utilities all neccessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

SECTION 16. Authority of Governing Body; Cost Reimbursement. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof to conduct investigations, present evidence, advise and represent the

1 governing body, and assist with litigation on water and sewer
2 utility ratemaking proceedings; and the water and sewer utility
3 engaged in such proceedings shall be required to reimburse the
4 governing body for the reasonable costs of such services.
5 SECTION 17. Assistance by Commission. The commission may
6 advise and assist municipalities upon request in connection with
7 questions and proceedings arising under this Act. Such assistance
8 may include aid to municipalities in connection with matters
9 pending before the commission, the courts, or the governing body of
10 any municipality, including making members of the staff available
11 as witnesses and otherwise providing evidence to them.
12 SECTION 18. Appeal. (a) Any party to a rate proceeding
13 before the governing body of a municipality may appeal the decision
14 of the governing body to the commission.
15 (b) Citizens of a municipality may appeal the decision of
16 the governing body in any rate proceeding to the commission through
17 the filing of a petition for review signed by the lesser of 20,000
18 or 10 percent of the number of qualified voters of such
19 municipality.
20 (c) The appeal process shall be instituted within 30 days of
21 the final decision by the governing body with the filing of a
22 petition for review with the commission and copies served on all
23 parties to the original rate proceeding.
24 (d) The commission shall hear such appeal de novo and by its
25 final order shall fix such rates as the municipality should have
26 fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

SECTION 19. 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 commission uniform accounts of all business transacted. The commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such 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 which in the judgment of the commission may be necessary to carry out any of the provisions of this Act. In the case of any utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission; provided, however, that the 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 commission for a utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(b) The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several

1 classes of property of each utility and shall require every utility
2 to carry a proper and adequate depreciation account in accordance
3 with such rates and methods and with such other rules and
4 regulations as the commission prescribes. Such rates, methods, and
5 accounts shall be utilized uniformly and consistently throughout
6 the rate-setting and appeal proceedings.
7 (c) Every utility shall keep separate accounts to show all
8 profits or losses resulting from the sale or lease of appliances,
9 fixtures, equipment, or other merchandise. No such profit or loss
10 shall be taken into consideration by the regulatory authority in
11 arriving at any rate to be charged for service by any such utility
12 to the extent that such merchandise is not integral to the
13 provision of utility service.
14 (d) Every utility is required to keep and render its books,
15 accounts, records, and memoranda accurately and faithfully in the
16 manner and form prescribed by the commission and to comply with all
17 directions of the regulatory authority relating to such books,
18 accounts, records, and memoranda. The regulatory authority may
19 require the examination and audit of all accounts.
20 (e) In determining the allocation of tax savings derived
21 from application of such methods as liberalized depreciation and
22 amortization and the investment tax credit, the regulatory
23 authority shall equitably balance the interests of present and
24 future customers and shall apportion such benefits between
25 consumers and the utilities accordingly. Where any portion of the
26 investment tax credit has been retained by a utility, that same

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.

(f) For the purposes of this section, "utility" includes "municipally owned utility."

SECTION 20. Powers of Commission. (a) The commission shall have the power to:

(1) require that water and sewer utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(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; it may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(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) 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 commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

SECTION 21. 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 shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records and to inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath or it may authorize the person conducting such investigation to examine under oath any officer, agent, or employee of any utility in connection with such investigation. 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 in lieu thereof if the commission so orders. Any utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b) (1) 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 Act.

(2) 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.

(3) 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 commencing an inspection, examination, or test.

(c) 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 the same are conducted.

SECTION 22. Reporting of Advertising or Public Relations Expenses. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment and institutional, consumption-inducing, and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which 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 rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

SECTION 23. Unlawful Rates, Rules, and Regulations. It shall be unlawful for any utility to charge, collect, or receive any rate for utility service or to impose any rule or regulation

other than as herein provided.

SECTION 24. Filing Schedule of Rates, Rules, and Regulations. Every utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any utility service, product, or commodity offered by the utility. Every utility shall file with and as a part of such schedules all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by such utility.

SECTION 25. Office of Utility; Records; Removal From State. Every utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission.

SECTION 26. Communications by Utilities With Regulatory Authority; Regulations and Records. (a) The regulatory authority shall 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.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities

represented, a brief description of the subject matter of the communication, and the action, if any, requested by the utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

SECTION 27. Standards of Service. (a) Every utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all utilities with respect to the service to be furnished; 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; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and 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 service of any utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the utility or until changed by the regulatory authority as herein provided.

SECTION 28. Examination and Test of Equipment. (a) The regulatory authority may examine and test any meter, instrument, or

1 equipment used for the measurement of any service of any utility
2 and may enter any premises occupied by any utility for the purpose
3 of making such examinations and tests and exercising any power
4 provided for in this Act and may set up and use on such premises
5 any apparatus and appliances necessary therefor. The utility shall
6 have the right to be represented at the making of the examinations,
7 tests, and inspections. The utility and its officers and employees
8 shall facilitate the examinations, tests, and inspections by giving
9 every reasonable aid to the regulatory authority and any person or
10 persons designated by the regulatory authority for the duties
11 aforesaid.
12 (b) Any consumer or user may have any meter or measuring
13 device tested by the utility once without charge after a reasonable
14 period to be fixed by the regulatory authority by rule and at
15 shorter intervals on payment of reasonable fees fixed by the
16 regulatory authority. The regulatory authority shall declare and
17 establish reasonable fees to be paid for other examining and
18 testing of such meters and other measuring devices on the request
19 of the consumer. If the test is requested to be made within the
20 period of presumed accuracy as fixed by the regulatory authority
21 since the last such test of the same meter or other measuring
22 device, the fee to be paid by the consumer or user at the time of
23 his request shall be refunded to the consumer or user if the meter
24 or measuring device is found unreasonably defective or incorrect to
25 the substantial disadvantage of the consumer or user. If the
26 consumer's request is made at a time beyond the period of presumed

accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

SECTION 29. Power to Ensure Compliance; Rate Regulation. Subject to the provisions of this Act, the commission is hereby vested with all authority and power of the State of Texas to ensure compliance with the obligations of utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of water and sewer utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

SECTION 30. Just and Reasonable Rates. It shall be the duty of the regulatory authority to ensure that every rate made, demanded, or received by any utility or by any two or more 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 consumers. For rate-making purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission deems such treatment to be appropriate.

SECTION 31. Fixing Overall Revenues. In fixing the rates of a utility the regulatory authority shall fix its overall revenues

at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

SECTION 32. Fair Return; Burden of Proof. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof 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 shall be on the utility.

SECTION 33. Components of Invested Capital and Net Income. The components of invested capital and net income shall be determined according to the following rules:

(a) Invested Capital. Utility rates shall be based upon the original cost of property used by and useful to the utility in providing service, including where 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 upon the demonstration by the utility by clear and convincing evidence that such inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned

1 or managed. Invested capital is the actual money cost or the
2 actual money value of any consideration paid other than money of
3 the property at the time it shall have been dedicated to public
4 use, whether by the utility which is the present owner or by a
5 predecessor, less depreciation.
6 (b) Separations and Allocations. Cost of facilities,
7 revenues, expenses, taxes, and reserves shall be separated or
8 allocated as prescribed by the regulatory authority.
9 (c) Net Income. By "net income" is meant the total revenues
10 of the utility less all reasonable and necessary expenses as
11 determined by the regulatory authority. The regulatory authority
12 shall determine expenses and revenues in a manner consistent with
13 the following:
14 (1) Transactions with Affiliated Interests. Payment to
15 affiliated interests for costs of any services, or any property,
16 right, or thing, or for interest expense shall not be allowed
17 either as capital cost or as expense except to the extent that the
18 regulatory authority shall find such payment to be reasonable. Any
19 such finding of reasonableness shall include specific statements
20 setting forth the cost to the affiliate of each item or class of
21 items in question and a finding that the price to the utility is no
22 higher than prices charged by the supplying affiliate to its other
23 affiliates or divisions for the same item or items, or to
24 unaffiliated persons or corporations.
25 (2) Income Taxes. If the utility is a member of an
26 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 so 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 by reason of 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 the property or services so purchased. 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 such credit applies to the extent and at such rate as allowed by the Internal Revenue Code.

(3) Expenses Disallowed. The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for rate-making purposes.

SECTION 34. Unreasonable or Violative Existing Rates; Investigating Costs of Obtaining Service From Another Source. Whenever 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 provision of law, the regulatory authority shall determine the just and reasonable

rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the utility; and such rates shall constitute the legal rates of the utility until changed as provided in this Act. Whenever a utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such utility.

SECTION 35. Statement of Intent to Change Rates; Major Changes; Hearing; Suspension of Rate Schedule; Determination of Rate Level. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a

newspaper having general circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations. Provided, however, nothing in this subsection shall apply to a water or sewer utility that:

(1) has fewer than 150 customers; and

(2) is not a member of a group filing a consolidated tax return; and

(3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rates to take effect prior to the end of such 35-day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the regulatory authority any schedule modifying or resulting in a change in any rates then in force, the regulatory authority shall on complaint by any affected person or may on its own motion, at any time within 30

days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The regulatory authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the regulatory authority finds that a longer time will be required for a final determination, the regulatory authority may further extend the period for an additional 30 days. If the regulatory authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the

1 regulatory authority as above provided, the rates in force when the
2 suspended schedule was filed shall continue in force unless the
3 regulatory authority shall establish a temporary rate. The
4 regulatory authority shall give preference to the hearing and
5 decision of questions arising under this section over all other
6 questions pending before it and decide the same as speedily as
7 possible.

8 (e) If the regulatory authority fails to make its final
9 determination of rates within 90 days from the date that the
10 proposed change otherwise would have gone into effect, the utility
11 concerned may put a changed rate, not to exceed the proposed rate,
12 into effect upon the filing with the regulatory authority of a bond
13 payable to the regulatory authority in an amount and with sureties
14 approved by the regulatory authority conditioned upon refund and in
15 a form approved by the regulatory authority. The utility concerned
16 shall refund or credit against future bills all sums collected
17 during the period of suspension in excess of the rate finally
18 ordered plus interest at the current rate as finally determined by
19 the regulatory authority.

20 (f) If, after hearing, the regulatory authority finds the
21 rates to be unreasonable or in any way in violation of any
22 provision of law, the regulatory authority shall determine the
23 level of rates to be charged or applied by the utility for the
24 service in question and shall fix the same by order to be served
25 upon the utility; these rates are thereafter to be observed until
26 changed, as provided by this Act.

(g) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

SECTION 36. Rates for Areas not Within Municipality. Water and sewer utility rates for areas not within any municipality shall not exceed without commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

SECTION 37. Unreasonable Preference or Prejudice as to Rates or Services. No water and sewer utility may as to rates or services 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. No utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

SECTION 38. Equality of Rates and Services. No water and sewer utility may directly or indirectly by any device whatsoever or in any manner charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided in this Act, nor may any person 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 upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall 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.

SECTION 39. Discrimination; Restriction on Competition. No water and sewer utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, nor may any utility engage in any other practice that tends to restrict or impair such competition.

SECTION 40. Payments in Lieu of Taxes. No payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may 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.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

SECTION 41. Definitions. For the purposes of this article only:

(1) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail water and sewer utility service.

(2) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation who is providing utility services other than water and sewer services and who are under the jurisdiction of the Railroad Commission of Texas or the Public Utility Commission of Texas after the effective date of this Act. For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

SECTION 42. Certificate Required. Upon the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without

first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 43. Exceptions for Extension of Service. (a) A 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 and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(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; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility

1 service.

2 SECTION 44. Application; Maps; Evidence and Consent. (a) A
3 public utility shall submit to the commission an application to
4 obtain a certificate of public convenience and necessity or an
5 amendment thereof.

6 (b) On or before 90 days after the effective date of this
7 Act, or at a later date on request in writing by a public utility
8 when good cause is shown, or at such later dates as the commission
9 may order, each public utility shall file with the commission a map
10 or maps showing all its facilities and illustrating separately
11 facilities for generation, transmission, and distribution of its
12 services.

13 (c) Each applicant for a certificate shall file with the
14 commission such evidence as is required by the commission to show
15 that the applicant has received the required consent, franchise, or
16 permit of the proper municipality or other public authority.

17 SECTION 45. Prior Construction or Operation. On application
18 made to the commission, the commission shall issue a certificate of
19 public convenience and necessity for the construction or operation
20 then being conducted to any public utility or retail public utility
21 actually providing service to any geographical area on September 1,
22 1975, or to any person or corporation actively engaged on
23 September 1, 1975, in the construction, installation, extension, or
24 improvement of or addition to any facility or system used or to be
25 used in providing public utility service.

26 SECTION 46. Notice and Hearing; Issuance or Refusal; Factors

Considered. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 45, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

SECTION 47. Area Included Within City, Town, or Village.

(a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the 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 cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

SECTION 48. Contracts Valid and Enforceable. Contracts between retail public utilities designating areas to be served and

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

5 SECTION 49. Preliminary Order for Certificate. If a public
6 utility desires to exercise a right or privilege under a franchise
7 or permit which it contemplates securing but which has not as yet
8 been granted to it, such public utility may apply to the commission
9 for an order preliminary to the issuance of the certificate. The
10 commission may thereupon make an order declaring that it will on
11 application under such rules as it prescribes issue the desired
12 certificate on such terms and conditions as it designates, after
13 the public utility has obtained the contemplated franchise or
14 permit. On presentation to the commission of evidence satisfactory
15 to it that the franchise or permit has been secured by the public
16 utility, the commission shall issue the certificate.

17 SECTION 50. Continuous and Adequate Service; Discontinuance,
18 Reduction or Impairment of Service. (a) The holder of any
19 certificate of public convenience and necessity shall serve every
20 consumer within its certified area and shall render continuous and
21 adequate service within the area or areas.

22 (b) Unless the commission issues a certificate that neither
23 the present or future convenience and necessity will be adversely
24 affected, the holder of a certificate shall not discontinue,
25 reduce, or impair service to a certified service area or part
26 thereof except for:

(1) nonpayment of charges;

(2) nonuse; or

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

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

SECTION 51. Sale, Assignment, or Lease of Certificate. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

SECTION 52. Interference With Other Public Utility. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

SECTION 53. Improvements in Service; Interconnecting Service. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable

area and it is reasonable to require the company to provide such improved service; and

(2) order two or more public utilities to establish specified facilities for the interconnecting service.

SECTION 54. Revocation or Amendment of Certificate. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

SECTION 55. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction. No utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000 or merge or consolidate with another utility operating in this state unless the utility reports such transaction to the commission within a reasonable time. On the filing of a report with the commission, the commission shall investigate the same with or without public hearing to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, or

consolidated. If the commission finds that such transactions are not in the public interest, the commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the utility by construction.

SECTION 56. Purchase of Voting Stock in Another Public Utility: Report. No utility may purchase voting stock in another utility doing business in Texas, unless the utility reports such purchase to the commission.

SECTION 57. Loans to Stockholders: Report. No utility may 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 commission within a reasonable time.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

SECTION 58. Jurisdiction Over Affiliated Interests. The commission shall have jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of such 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 such transactions.

SECTION 59. Disclosure of Substantial Interest in Voting Securities. The 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.

ARTICLE X. JUDICIAL REVIEW

SECTION 60. Right to Judicial Review; Evidence. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

SECTION 61. Costs and Attorneys' Fees. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive and who is a prevailing party in proceedings for review of a commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harrassment, the court may award to the defendant utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

SECTION 62. Action to Enjoin or Require Compliance.

Whenever it appears to the commission that any utility or any other person or corporation is engaged in or is about to engage in any act in violation of this Act or of any order, rule, or regulation of the commission entered or adopted under the provisions of this Act or that any utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against such utility or other person or corporation to enjoin the commencement or continuation of any such act or to require compliance with such Act, rule, regulation, or order.

SECTION 63. Receivership. (a) At the request of 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 violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or 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

1 court.

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

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

11 SECTION 64. Payment of Costs of Receivership. The receiver
12 may, subject to the approval of the court and after giving notice
13 to all interested parties, sell or otherwise dispose of real or
14 personal property or any part thereof of a water or sewer utility
15 against which a proceeding has been brought under this article for
16 the purpose of paying for the costs incurred in the operation of
17 the receivership. Said costs shall include but are not limited to
18 the payment of fees to the receiver for his services; payment of
19 fees to attorneys, accountants, engineers, or any other person or
20 entity which provides goods or services necessary to the operation
21 of the receivership; payment of costs incurred in ensuring that any
22 property owned or controlled by a water or sewer utility is not
23 used in violation of a final order of the commission.

24 SECTION 65. Penalty Against Utility or Affiliated Interest.
25 (a) Any utility or affiliated interest that knowingly violates a
26 provision of this Act, fails to perform a duty imposed on it, or

fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or decree or judgment of a court shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each offense.

(b) A utility or affiliated interest commits a separate offense each day it continues to violate the provisions of 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 commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 66. Personal Penalty. (a) Any person or persons who wilfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution against any utility or any officer, director, agent, or employee thereof or any other corporation or person.

SECTION 67. Contempt Proceedings. If any person fails to comply with any lawful order of 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 commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 68. Disposition of Fines and Penalties. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission and paid by the commission to the State Treasury to be placed in the General Revenue Fund.

SECTION 69. Venue. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

SECTION 70. Assessments Upon Public Utilities. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

SECTION 71. Payment Dates; Delinquency. All assessments shall be due on August 15 of each year. Any utility may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of 10 percent per annum on the assessment and penalty

due.

SECTION 72. Collection and Payment Into General Revenue Fund. All fees, penalties, and interest paid under the provision of Sections 70 and 71 of this article shall be collected by the comptroller of public accounts and paid into the General Revenue Fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 70 when made.

SECTION 73. Approval of Budget. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

SECTION 74. Accounting Records; Audit. The commission shall keep such accounting records as required by the State Auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

SECTION 75. Complaint by any Affected Person. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer or of any order, ordinance, rule, or regulation of the regulatory authority.

SECTION 76. Record of Proceedings; Right to Hearing. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

SECTION 77. Judicial Stay or Suspension of Order, Ruling or

Decision. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend in whole or in part the operation of the regulatory authority order, ruling, or decision, and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

SECTION 78. Assumption of Jurisdiction. The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on September 1, 1983.

SECTION 79. Certain Water and Sewer Utility Property Included in Rate Base; Valuation Used; Depreciation Expense. (a) The provisions of this section apply notwithstanding any other provision of this Act.

(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all rate-making formulae and 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 shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

SECTION 80. Effective Date. This Act shall become effective

on September 1, 1983, and the commission shall thereupon exercise the powers and duties conferred upon it as provided in this Act.

SECTION 81. Liberal Construction. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of water and sewer utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

SECTION 82. Repealer. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes); Article 1446c, Vernon's Texas Civil Statutes, 1980, as amended, and all other laws and parts of laws to the extent that same conflict with this Act are repealed effective September 1, 1983.

(b) Nothing in this Act shall affect the jurisdiction of the commission or the Texas Department of Water Resources otherwise afforded under Sections 11.036, 11.041, 12.013, and 50.275, Water Code.

SECTION 83. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 84. The purpose of this Act is to transfer water and sewer utility regulation existing under the Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), to the Texas Water Commission, and nothing herein is intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of that exercised by the Public Utility Commission of Texas prior to the effective date of this Act. Further, nothing herein is 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 shall 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, as amended, and such prior action or authority shall be treated as still remaining 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 commenced prior to the effective date of this Act shall be affected by its enactment.

SECTION 85. On the effective date of this Act, all equipment, data, documents, facilities, and other items pertaining to water and sewer utilities of the Public Utility Commission of Texas shall be transferred to the Texas Water Commission.

SECTION 86. On the effective date of this Act, the Texas Water Commission shall implement the powers and duties delegated to it. The commission is authorized, to the extent it deems advisable and under such terms and conditions deemed necessary and desirable, to contract with the Public Utility Commission of Texas to provide for the disposition of any and all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas on the effective date of this Act, 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 the provisions of 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, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), which, together with the record, shall be tendered to the Texas Water Commission for final decision.

SECTION 87. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its

1 passage, and it is so enacted.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 24, 1983

Honorable John A. Traeger, Chairman
Committee on Intergovernmental Relations
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 884
By: Traeger

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 884 (defining water and sewer utilities and providing for their regulation) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would transfer the regulation of water and sewer utilities from the Public Utilities Commission to the Texas Water Commission and continue the requirement of an assessment upon public utilities to be paid into the General Revenue Fund.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Reduced General Revenue Fund Appropriations to Public Utility Commission	Increased General Revenue Fund Appropriations to Water Resources Commission	Transfer of State employees
1984	-$261,292	+$261,292	6
1985	- 276,264	+ 276,264	6
1986	- 276,264	+ 276,264	6
1987	- 276,264	+ 276,264	6
1988	- 276,264	+ 276,264	6

Similar annual appropriations would continue as long as the provisions of the bill are in effect.

The Department of Water Resources has indicated that they would require a significantly higher appropriation than the one shown above.

No fiscal implication to units of local government is anticipated.

Jim Oliver
Director

Source: Texas Department of Water Resources; Public Utility Commission;
LBB Staff: JO, JH, KH, NRH, PA

8

HOUSE COMMITTEE REPORT

1st Printing

By: Traeger
(Schlueter)

S.B. No. 884

A BILL TO BE ENTITLED

AN ACT

relating to the definition of water and sewer utilities and to their regulation; to the jurisdiction, powers and duties, and qualifications of members of the Texas Water Commission; to the jurisdiction and powers of municipalities and the Texas Department of Water Resources and its executive director; to the powers and duties of the general counsel; to rules and considerations for fixing or changing rates and for issuance of certificates of convenience and necessity; providing for hearings and for judicial review; providing for certain assessments and fees; providing enforcement procedures and penalties; repealing conflicting laws.

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

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

SECTION 1. Short Title. This Act may be cited as the "Water and Sewer Utility Regulatory Act."

SECTION 2. Legislative Policy and Purpose. This Act is enacted to protect the public interest inherent in the rates and services of water and sewer utilities. The legislature finds that water and sewer utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore water and sewer utility rates, operations, and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for

1 such competition. The purpose of this Act is to establish a
2 comprehensive regulatory system which is adequate to the task of
3 regulating water and sewer utilities as defined by this Act to
4 assure rates, operations, and services which are just and
5 reasonable to the consumers and to the utilities.
6 SECTION 3. Definitions.
7 (1) The term "person," when used in this Act includes
8 natural persons, partnerships of two or more persons having a joint
9 or common interest, mutual or cooperative associations, water
10 supply or sewer service corporations, and corporations, as herein
11 defined.
12 (2) The term "municipality," when used in this Act includes
13 cities and incorporated villages or towns existing, created, or
14 organized under the general, home-rule, or special laws of the
15 state.
16 (3) The term "water and sewer utility," "public utility," or
17 "utility" when used in this Act, includes any person, corporation,
18 river authority, cooperative corporation, or any combination
19 thereof, other than a municipal corporation or a water supply or
20 sewer service corporation, or their lessees, trustees, and
21 receivers, now or hereafter owning or operating for compensation in
22 this state equipment or facilities for the transmitting, storing,
23 distributing, selling, or furnishing of potable water to the public
24 or for resale to the public for any use or the collection,
25 transportation, treatment, or disposal of sewage or other operation
26 of a sewage disposal service for the public, other than equipment

or facilities owned and operated for either purpose by a city, town, or other political subdivision of this state or a water supply or sewer service corporation. The term "water and sewer utility" or "utility" shall 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 such employee service or tenancy, when such service or commodity is not resold to or used by others.

(4) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected whether directly or indirectly by any water or utility for any service, product, or commodity described in Subdivision (3) of this section and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(5) The word "commission," when used in this Act, means the Texas Water Commission, as created and constituted by Section 5.221, Water Code, as amended.

(6) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the Texas Water Commission or the governing body of any municipality.

(7) "Affected person" means any 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

1 competitor of a utility with respect to any service performed by
2 the utility or that desires to enter into competition.
3 (8) "Affiliated interest" or "affiliate" means:
4 (A) any person or corporation owning or holding directly or
5 indirectly five percent or more of the voting securities of a
6 utility;
7 (B) any person or corporation in any chain of successive
8 ownership of five percent or more of the voting securities of a
9 utility;
10 (C) any corporation five percent or more of the voting
11 securities of which is owned or controlled directly or indirectly
12 by a utility;
13 (D) any corporation five percent or more of the voting
14 securities of which is owned or controlled directly or indirectly
15 by any person or corporation that owns or controls directly or
16 indirectly five percent or more of the voting securities of any
17 utility or by any person or corporation in any chain of successive
18 ownership of five percent of such securities;
19 (E) any person who is an officer or director of a utility or
20 of any corporation in any chain of successive ownership of five
21 percent of more of voting securities of a public utility;
22 (F) any person or corporation that the commission, after
23 notice and hearing, determines actually exercises any substantial
24 influence or control over the policies and actions of a utility or
25 over which a utility exercises such control or that is under common
26 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 such 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 commission, after notice and hearing, determines is actually exercising such substantial influence over the policies and action 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 with such within the meaning of this section, even though no one of them alone is so affiliated.

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

(10) "Commissioner" means a member of the Texas Water Commission.

(11) "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 shall not include municipal corporations unless expressly provided otherwise in this

Act.

(12) "Facilities" means all the plant and equipment of a 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 utility.

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

(16) "Service" is used in this Act in its broadest and most inclusive sense and includes any and all acts done, rendered, or performed and any and all things furnished or supplied and any and all facilities used, furnished, or supplied by utilities in the performance of their duties under this Act to their patrons, employees, other utilities, and the public, as well as the interchange of facilities between two or more of them.

(17) "Test year" means the most recent 12 months for which operating data for a utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(18) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

SECTION 4. Applicability of Administrative Procedure and Texas Register Act. The Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), applies to all proceedings under this Act except to the extent inconsistent with this Act.

ARTICLE II. ORGANIZATION OF COMMISSION

SECTION 5. The Texas Water Commission, as created and implemented by Section 5.221, Water Code, as amended, implement the powers and duties in this Act.

SECTION 6. Employees. (a) The commission shall employ such hearing examiners, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act.

(b) The executive director of the Texas Department of Water Resources shall employ such investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as the executive director deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, the employees shall be paid the same

salary as employees of the Railroad Commission of Texas holding comparable positions.

(c) The executive director of the Texas Department of Water Reosurces shall employ:

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(d) The general counsel of the Texas Department of Water Resources and his staff are responsible for the gathering of information relating to all matters within the authority of the commission. The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the Texas Department of Water Resources and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities

under the jurisdiction of the commission;

(4) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(5) preparation of recommendations and a report of the executive director of the Texas Department of Water Resources for inclusion in the annual report of the commission;

(6) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(7) such other activities as are reasonably necessary to enable him to perform his duties.

SECTION 7. Orders; Transcript and Exhibits; Public Records. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252--17a, Vernon's Texas Civil Statutes).

SECTION 8. Annual Report. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth

such other information concerning the operations of the commission and the water and sewer utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

SECTION 9. Attorney General to Represent Commission. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts and any court of the United States.

ARTICLE III. JURISDICTION

SECTION 10. General Power; Rules; Hearings. The commission has the general power to regulate and supervise the business of every water and sewer utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The 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 the provisions of this Act or the rules, orders, or other actions of the commission.

SECTION 11. Jurisdiction of Municipality; Surrender; Original and Appellate Jurisdiction of Commission. (a) Subject to the limitations imposed in this Act and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over water or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or 10 percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time by vote of the electorate reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may by vote of the electorate reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

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

(e) The 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 Act.

SECTION 12. Municipality-Owned Utilities. Nothing in this article shall be construed to confer on the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate land and supervise water and sewer utilities within their boundaries, except

as provided in this Act.

ARTICLE IV. MUNICIPALITIES

SECTION 13. Franchises. Nothing in this Act shall 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 the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

SECTION 14. Local Utility Service; Exempt and Nonexempt Areas. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act 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 commission or other standards and rules not inconsistent therewith. Notwithstanding any such election, the 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 Act 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. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 15. Rate Determination. Any municipality regulating its water and sewer utilities pursuant to this Act shall require from those utilities all neccessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

SECTION 16. Authority of Governing Body; Cost Reimbursement. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof to conduct investigations, present evidence, advise and represent the

1 governing body, and assist with litigation on water and sewer
2 utility ratemaking proceedings; and the water and sewer utility
3 engaged in such proceedings shall be required to reimburse the
4 governing body for the reasonable costs of such services.
5 SECTION 17. Assistance by Commission. The commission may
6 advise and assist municipalities upon request in connection with
7 questions and proceedings arising under this Act. Such assistance
8 may include aid to municipalities in connection with matters
9 pending before the commission, the courts, or the governing body of
10 any municipality, including making members of the staff available
11 as witnesses and otherwise providing evidence to them.
12 SECTION 18. Appeal. (a) Any party to a rate proceeding
13 before the governing body of a municipality may appeal the decision
14 of the governing body to the commission.
15 (b) Citizens of a municipality may appeal the decision of
16 the governing body in any rate proceeding to the commission through
17 the filing of a petition for review signed by the lesser of 20,000
18 or 10 percent of the number of qualified voters of such
19 municipality.
20 (c) The appeal process shall be instituted within 30 days of
21 the final decision by the governing body with the filing of a
22 petition for review with the commission and copies served on all
23 parties to the original rate proceeding.
24 (d) The commission shall hear such appeal de novo and by its
25 final order shall fix such rates as the municipality should have
26 fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

SECTION 19. 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 commission uniform accounts of all business transacted. The commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such 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 which in the judgment of the commission may be necessary to carry out any of the provisions of this Act. In the case of any utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission; provided, however, that the 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 commission for a utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(b) The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several

1 classes of property of each utility and shall require every utility
2 to carry a proper and adequate depreciation account in accordance
3 with such rates and methods and with such other rules and
4 regulations as the commission prescribes. Such rates, methods, and
5 accounts shall be utilized uniformly and consistently throughout
6 the rate-setting and appeal proceedings.
7 (c) Every utility shall keep separate accounts to show all
8 profits or losses resulting from the sale or lease of appliances,
9 fixtures, equipment, or other merchandise. No such profit or loss
10 shall be taken into consideration by the regulatory authority in
11 arriving at any rate to be charged for service by any such utility
12 to the extent that such merchandise is not integral to the
13 provision of utility service.
14 (d) Every utility is required to keep and render its books,
15 accounts, records, and memoranda accurately and faithfully in the
16 manner and form prescribed by the commission and to comply with all
17 directions of the regulatory authority relating to such books,
18 accounts, records, and memoranda. The regulatory authority may
19 require the examination and audit of all accounts.
20 (e) In determining the allocation of tax savings derived
21 from application of such methods as liberalized depreciation and
22 amortization and the investment tax credit, the regulatory
23 authority shall equitably balance the interests of present and
24 future customers and shall apportion such benefits between
25 consumers and the utilities accordingly. Where any portion of the
26 investment tax credit has been retained by a utility, that same

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.

(f) For the purposes of this section, "utility" includes "municipally owned utility."

SECTION 20. Powers of Commission. (a) The commission shall have the power to:

(1) require that water and sewer utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(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; it may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(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) 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 commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

SECTION 21. 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 shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records and to inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath or it may authorize the person conducting such investigation to examine under oath any officer, agent, or employee of any utility in connection with such investigation. 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 in lieu thereof if the commission so orders. Any utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b) (1) 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 Act.

(2) 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.

(3) 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 commencing an inspection, examination, or test.

(c) 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 the same are conducted.

SECTION 22. Reporting of Advertising or Public Relations Expenses. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment and institutional, consumption-inducing, and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which 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 rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

SECTION 23. Unlawful Rates, Rules, and Regulations. It shall be unlawful for any utility to charge, collect, or receive any rate for utility service or to impose any rule or regulation

other than as herein provided.

SECTION 24. Filing Schedule of Rates, Rules, and Regulations. Every utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any utility service, product, or commodity offered by the utility. Every utility shall file with and as a part of such schedules all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by such utility.

SECTION 25. Office of Utility; Records; Removal From State. Every utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission.

SECTION 26. Communications by Utilities With Regulatory Authority; Regulations and Records. (a) The regulatory authority shall 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.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities

represented, a brief description of the subject matter of the communication, and the action, if any, requested by the utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

SECTION 27. Standards of Service. (a) Every utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all utilities with respect to the service to be furnished; 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; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and 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 service of any utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the utility or until changed by the regulatory authority as herein provided.

SECTION 28. Examination and Test of Equipment. (a) The regulatory authority may examine and test any meter, instrument, or

1 equipment used for the measurement of any service of any utility
2 and may enter any premises occupied by any utility for the purpose
3 of making such examinations and tests and exercising any power
4 provided for in this Act and may set up and use on such premises
5 any apparatus and appliances necessary therefor. The utility shall
6 have the right to be represented at the making of the examinations,
7 tests, and inspections. The utility and its officers and employees
8 shall facilitate the examinations, tests, and inspections by giving
9 every reasonable aid to the regulatory authority and any person or
10 persons designated by the regulatory authority for the duties
11 aforesaid.
12 (b) Any consumer or user may have any meter or measuring
13 device tested by the utility once without charge after a reasonable
14 period to be fixed by the regulatory authority by rule and at
15 shorter intervals on payment of reasonable fees fixed by the
16 regulatory authority. The regulatory authority shall declare and
17 establish reasonable fees to be paid for other examining and
18 testing of such meters and other measuring devices on the request
19 of the consumer. If the test is requested to be made within the
20 period of presumed accuracy as fixed by the regulatory authority
21 since the last such test of the same meter or other measuring
22 device, the fee to be paid by the consumer or user at the time of
23 his request shall be refunded to the consumer or user if the meter
24 or measuring device is found unreasonably defective or incorrect to
25 the substantial disadvantage of the consumer or user. If the
26 consumer's request is made at a time beyond the period of presumed

accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

SECTION 29. Power to Ensure Compliance; Rate Regulation. Subject to the provisions of this Act, the commission is hereby vested with all authority and power of the State of Texas to ensure compliance with the obligations of utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of water and sewer utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

SECTION 30. Just and Reasonable Rates. It shall be the duty of the regulatory authority to ensure that every rate made, demanded, or received by any utility or by any two or more 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 consumers. For rate-making purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission deems such treatment to be appropriate.

SECTION 31. Fixing Overall Revenues. In fixing the rates of a utility the regulatory authority shall fix its overall revenues

at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

SECTION 32. Fair Return; Burden of Proof. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof 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 shall be on the utility.

SECTION 33. Components of Invested Capital and Net Income. The components of invested capital and net income shall be determined according to the following rules:

(a) Invested Capital. Utility rates shall be based upon the original cost of property used by and useful to the utility in providing service, including where 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 upon the demonstration by the utility by clear and convincing evidence that such inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned

or managed. Invested capital 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 which is the present owner or by a predecessor, less depreciation.

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

(c) Net Income. By "net income" is meant the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall 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.

(2) Income Taxes. 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 so 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 by reason of 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 the property or services so purchased. 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 such credit applies to the extent and at such rate as allowed by the Internal Revenue Code.

(3) Expenses Disallowed. The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for rate-making purposes.

SECTION 34. Unreasonable or Violative Existing Rates; Investigating Costs of Obtaining Service From Another Source. Whenever 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 provision of law, the regulatory authority shall determine the just and reasonable

rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the utility; and such rates shall constitute the legal rates of the utility until changed as provided in this Act. Whenever a utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such utility.

SECTION 35. Statement of Intent to Change Rates; Major Changes; Hearing; Suspension of Rate Schedule; Determination of Rate Level. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a

1 newspaper having general circulation in each county containing
2 territory affected by the proposed change, and to such other
3 affected persons as may be required by the regulatory authority's
4 rules and regulations. Provided, however, nothing in this
5 subsection shall apply to a water or sewer utility that:
6 (1) has fewer than 150 customers; and
7 (2) is not a member of a group filing a consolidated tax
8 return; and
9 (3) is not under common control or ownership with another
10 water or sewer utility.
11 (b) The regulatory authority, for good cause shown, may,
12 except in the case of major changes, allow changes in rates to take
13 effect prior to the end of such 35-day period under such conditions
14 as it may prescribe, subject to suspension as provided herein. All
15 such changes shall be indicated immediately upon its schedules by
16 such utility. "Major changes" shall mean an increase in rates
17 which would increase the aggregate revenues of the applicant more
18 than the greater of $100,000 or two and one-half percent, but shall
19 not include changes in rates allowed to go into effect by the
20 regulatory authority or made by the utility pursuant to an order of
21 the regulatory authority after hearings held upon notice to the
22 public.
23 (c) Whenever there is filed with the regulatory authority
24 any schedule modifying or resulting in a change in any rates then
25 in force, the regulatory authority shall on complaint by any
26 affected person or may on its own motion, at any time within 30

days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The regulatory authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the regulatory authority finds that a longer time will be required for a final determination, the regulatory authority may further extend the period for an additional 30 days. If the regulatory authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the

regulatory authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the regulatory authority shall establish a temporary rate. The regulatory authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the regulatory authority finds the rates to be unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

(g) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

SECTION 36. Rates for Areas not Within Municipality. Water and sewer utility rates for areas not within any municipality shall not exceed without commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

SECTION 37. Unreasonable Preference or Prejudice as to Rates or Services. No water and sewer utility may as to rates or services 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. No utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

SECTION 38. Equality of Rates and Services. No water and sewer utility may directly or indirectly by any device whatsoever or in any manner charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided in this Act, nor may any person 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 upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall 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.

SECTION 39. Discrimination; Restriction on Competition. No water and sewer utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, nor may any utility engage in any other practice that tends to restrict or impair such competition.

SECTION 40. Payments in Lieu of Taxes. No payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may 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.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

SECTION 41. Definitions. For the purposes of this article only:

(1) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail water and sewer utility service.

(2) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation who is providing utility services other than water and sewer services and who are under the jurisdiction of the Railroad Commission of Texas or the Public Utility Commission of Texas after the effective date of this Act. For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

SECTION 42. Certificate Required. Upon the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without

first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 43. Exceptions for Extension of Service. (a) A 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 and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(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; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility

service.

SECTION 44. Application; Maps; Evidence and Consent. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

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

SECTION 45. Prior Construction or Operation. On application made to the commission, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility or retail public utility actually providing service to any geographical area on September 1, 1975, or to any person or corporation actively engaged on September 1, 1975, in the construction, installation, extension, or improvement of or addition to any facility or system used or to be used in providing public utility service.

SECTION 46. Notice and Hearing; Issuance or Refusal; Factors

1 Considered. (a) When an application for a certificate of public
2 convenience and necessity is filed, the commission shall give
3 notice of such application to interested parties and, if requested,
4 shall fix a time and place for a hearing and give notice of the
5 hearing. Any person interested in the application may intervene at
6 the hearing.
7 (b) Except for certificates for prior operations granted
8 under Section 45, the commission may grant applications and issue
9 certificates only if the commission finds that the certificate is
10 necessary for the service, accommodation, convenience, or safety of
11 the public. The commission may issue the certificate as prayed
12 for, or refuse to issue it, or issue it for the construction of a
13 portion only of the contemplated system or facility or extension
14 thereof, or for the partial exercise only of the right or
15 privilege.
16 (c) Certificates of convenience and necessity shall be
17 granted on a nondiscriminatory basis after consideration by the
18 commission of the adequacy of existing service, the need for
19 additional service, the effect of the granting of a certificate on
20 the recipient of the certificate and on any public utility of the
21 same kind already serving the proximate area, and on such factors
22 as community values, recreational and park areas, historical and
23 aesthetic values, environmental integrity, and the probable
24 improvement of service or lowering of cost to consumers in such
25 area resulting from the granting of such certificate.
26 SECTION 47. Area Included Within City, Town, or Village.

(a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the 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 cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

SECTION 48. Contracts Valid and Enforceable. Contracts between retail public utilities designating areas to be served and

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

5 SECTION 49. Preliminary Order for Certificate. If a public
6 utility desires to exercise a right or privilege under a franchise
7 or permit which it contemplates securing but which has not as yet
8 been granted to it, such public utility may apply to the commission
9 for an order preliminary to the issuance of the certificate. The
10 commission may thereupon make an order declaring that it will on
11 application under such rules as it prescribes issue the desired
12 certificate on such terms and conditions as it designates, after
13 the public utility has obtained the contemplated franchise or
14 permit. On presentation to the commission of evidence satisfactory
15 to it that the franchise or permit has been secured by the public
16 utility, the commission shall issue the certificate.

17 SECTION 50. Continuous and Adequate Service; Discontinuance,
18 Reduction or Impairment of Service. (a) The holder of any
19 certificate of public convenience and necessity shall serve every
20 consumer within its certified area and shall render continuous and
21 adequate service within the area or areas.

22 (b) Unless the commission issues a certificate that neither
23 the present or future convenience and necessity will be adversely
24 affected, the holder of a certificate shall not discontinue,
25 reduce, or impair service to a certified service area or part
26 thereof except for:

(1) nonpayment of charges;

(2) nonuse; or

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

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

SECTION 51. Sale, Assignment, or Lease of Certificate. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

SECTION 52. Interference With Other Public Utility. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

SECTION 53. Improvements in Service; Interconnecting Service. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable

area and it is reasonable to require the company to provide such improved service; and

(2) order two or more public utilities to establish specified facilities for the interconnecting service.

SECTION 54. Revocation or Amendment of Certificate. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

SECTION 55. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction. No utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000 or merge or consolidate with another utility operating in this state unless the utility reports such transaction to the commission within a reasonable time. On the filing of a report with the commission, the commission shall investigate the same with or without public hearing to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, or

consolidated. If the commission finds that such transactions are not in the public interest, the commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the utility by construction.

SECTION 56. Purchase of Voting Stock in Another Public Utility: Report. No utility may purchase voting stock in another utility doing business in Texas, unless the utility reports such purchase to the commission.

SECTION 57. Loans to Stockholders: Report. No utility may 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 commission within a reasonable time.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

SECTION 58. Jurisdiction Over Affiliated Interests. The commission shall have jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of such 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 such transactions.

SECTION 59. Disclosure of Substantial Interest in Voting Securities. The 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.

ARTICLE X. JUDICIAL REVIEW

SECTION 60. Right to Judicial Review; Evidence. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

SECTION 61. Costs and Attorneys' Fees. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive and who is a prevailing party in proceedings for review of a commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harrassment, the court may award to the defendant utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

SECTION 62. Action to Enjoin or Require Compliance.

Whenever it appears to the commission that any utility or any other person or corporation is engaged in or is about to engage in any act in violation of this Act or of any order, rule, or regulation of the commission entered or adopted under the provisions of this Act or that any utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against such utility or other person or corporation to enjoin the commencement or continuation of any such act or to require compliance with such Act, rule, regulation, or order.

SECTION 63. Receivership. (a) At the request of 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 violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or 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

1 court.

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

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

11 SECTION 64. Payment of Costs of Receivership. The receiver
12 may, subject to the approval of the court and after giving notice
13 to all interested parties, sell or otherwise dispose of real or
14 personal property or any part thereof of a water or sewer utility
15 against which a proceeding has been brought under this article for
16 the purpose of paying for the costs incurred in the operation of
17 the receivership. Said costs shall include but are not limited to
18 the payment of fees to the receiver for his services; payment of
19 fees to attorneys, accountants, engineers, or any other person or
20 entity which provides goods or services necessary to the operation
21 of the receivership; payment of costs incurred in ensuring that any
22 property owned or controlled by a water or sewer utility is not
23 used in violation of a final order of the commission.

24 SECTION 65. Penalty Against Utility or Affiliated Interest.
25 (a) Any utility or affiliated interest that knowingly violates a
26 provision of this Act, fails to perform a duty imposed on it, or

fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or decree or judgment of a court shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each offense.

(b) A utility or affiliated interest commits a separate offense each day it continues to violate the provisions of 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 commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 66. Personal Penalty. (a) Any person or persons who wilfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution against any utility or any officer, director, agent, or employee thereof or any other corporation or person.

SECTION 67. Contempt Proceedings. If any person fails to comply with any lawful order of 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 commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 68. Disposition of Fines and Penalties. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission and paid by the commission to the State Treasury to be placed in the General Revenue Fund.

SECTION 69. Venue. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

SECTION 70. Assessments Upon Public Utilities. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

SECTION 71. Payment Dates; Delinquency. All assessments shall be due on August 15 of each year. Any utility may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of 10 percent per annum on the assessment and penalty

due.

SECTION 72. Collection and Payment Into General Revenue Fund. All fees, penalties, and interest paid under the provision of Sections 70 and 71 of this article shall be collected by the comptroller of public accounts and paid into the General Revenue Fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 70 when made.

SECTION 73. Approval of Budget. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

SECTION 74. Accounting Records; Audit. The commission shall keep such accounting records as required by the State Auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

SECTION 75. Complaint by any Affected Person. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer or of any order, ordinance, rule, or regulation of the regulatory authority.

SECTION 76. Record of Proceedings; Right to Hearing. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

SECTION 77. Judicial Stay or Suspension of Order, Ruling or

Decision. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend in whole or in part the operation of the regulatory authority order, ruling, or decision, and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

SECTION 78. Assumption of Jurisdiction. The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on September 1, 1983.

SECTION 79. Certain Water and Sewer Utility Property Included in Rate Base; Valuation Used; Depreciation Expense. (a) The provisions of this section apply notwithstanding any other provision of this Act.

(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all rate-making formulae and 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 shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

SECTION 80. Effective Date. This Act shall become effective

on September 1, 1983, and the commission shall thereupon exercise the powers and duties conferred upon it as provided in this Act.

SECTION 81. Liberal Construction. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of water and sewer utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

SECTION 82. Repealer. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes); Article 1446c, Vernon's Texas Civil Statutes, 1980, as amended, and all other laws and parts of laws to the extent that same conflict with this Act are repealed effective September 1, 1983.

(b) Nothing in this Act shall affect the jurisdiction of the commission or the Texas Department of Water Resources otherwise afforded under Sections 11.036, 11.041, 12.013, and 50.275, Water Code.

SECTION 83. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 84. The purpose of this Act is to transfer water and sewer utility regulation existing under the Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), to the Texas Water Commission, and nothing herein is intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of that exercised by the Public Utility Commission of Texas prior to the effective date of this Act. Further, nothing herein is 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 shall 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, as amended, and such prior action or authority shall be treated as still remaining 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 commenced prior to the effective date of this Act shall be affected by its enactment.

SECTION 85. On the effective date of this Act, all equipment, data, documents, facilities, and other items pertaining to water and sewer utilities of the Public Utility Commission of Texas shall be transferred to the Texas Water Commission.

SECTION 86. On the effective date of this Act, the Texas Water Commission shall implement the powers and duties delegated to it. The commission is authorized, to the extent it deems advisable and under such terms and conditions deemed necessary and desirable, to contract with the Public Utility Commission of Texas to provide for the disposition of any and all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas on the effective date of this Act, 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 the provisions of 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, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), which, together with the record, shall be tendered to the Texas Water Commission for final decision.

SECTION 87. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its

1 passage, and it is so enacted.

COMMITTEE REPORT

5-12-83
(date)

The Honorable Gib Lewis
Speaker of the House of Representatives

Sir:

We, your COMMITTEE ON STATE AFFAIRS, to whom was referred SB 884 (measure) have had the same under consideration and beg to report back with the recommendation that it

(✓) do pass, without amendment.
( ) do pass, with amendment(s).
( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (✓) yes ( ) no

An author's fiscal statement was requested. ( ) yes (✓) no

An actuarial analysis was requested. ( ) yes (✓) no

The Committee recommends that this measure be placed on the ~~(Local)~~ or ~~(Consent)~~ Calendar.

This measure (✓) proposes new law.
( ) amends existing law.

House Sponsor of Senate Measure Schlueter

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Laney, Ch.			C	
Ceverha, V.C.	✓			
Millsap, C.B.O.	✓			
Bomer			✓	
Bush				✓
Davis	✓			
Gilley			✓	
Green				✓
Hill, P.	✓			
Horn	✓			
Keller	✓			
Pennington	✓			
Short	✓			
Smith, C.		✓		
Stiles	✓			

Total
9 aye
1 nay
3 present, not voting
2 absent

H. Laney
CHAIRMAN

Reynolds
COMMITTEE COORDINATOR

S.B. 884
By: Traeger

Committee on State Affairs

BILL ANALYSIS

Background

Presently water and sewer utilities are regulated by the Public Utility Commission. The Texas Water Commission also regulates the rates for which surface water may be sold between municipalities, industries and irrigators. This bill transfers the jurisdiction of the Public Utility Commission over water and sewer utilities to the Texas Water Commission. The existing Public Utility Regulatory Act (PURA) is used as the model to the extent possible to accomplish this change of jurisdictions.

Purpose

The purpose of transferring the Public Utility Commission's authority over water and sewer utilities is to vest in one agency, the Texas Water Commission, complete regulatory authority over water in Texas. Where now the Water Commission issue permits to use and discharge water, to approve certain projects using water of conservation and reclamation districts, and to set rates for use of surface water, the Water Commission lacks authority in a well-rounded regulatory system, to completely address the rates and services that provide the public water and sewer. This consolidation of power in the Texas Water Commission will enable it to meet the public concerns regarding rates and service utilizing regulatory experiences the agency has gained in the years since it was originally created in 1913.

Section by Section Analysis

Sec. 1 Short title: Water and Sewer Utility Regulatory Act.

Sec. 2 The policy of the State is indicated to be the protection of the public interest inherent in rates and services of water and sewer utilities.

Sec. 3 Definitions.

Sec. 4 The Administrative Procedure and Texas Register Act, Article 6252-13a, V.T.C.S., applies to all proceedings under this Act except to the extent inconsistent with this Act.

Sec. 5 Proposes to give the Texas Water Commission responsibility for implementing the provisions of this Act.

Sec. 6 Proposes to give the commmission authority to employ necessary employees to implement the Act, and the types of employees to be utilized.

Sec. 7 This section parallels the Texas Administrative Procedure Act, by requiring, among other matters, decisions to be in writing; and the Texas Open Records Act is made applicable by clearly stating that all files are public records subject to the Open Records Act.

Sec. 8 The Texas Water Commission is required to publish an annual report containing specific matters. The report requirements carry forward the matters required to be published by the Public Utility Commission.

Sec. 9 Requires the Attorney General to represent the commission in court.

Sec. 10 Sets forth jurisdiction of the commission over water and sewer utilities, together with the power to promulgate rules to enforce its responsibilities.

Sec. 11 As in the present PURA, municipal water and sewer utilities remain under the original jurisdiction of the governing body of the municipality. A municipality may elect to surrender its original jurisdiction to the commission, but provision is made to retract that delegation. The commission will succeed to the appellate jurisdiction exercised by the Public Utility Commission.

Sec. 12 The commission will not have the power to regulate or supervise rates of a municipally owned utility within the municipality's boundaries.

Sec. 13 The Act will not affect a municipality's power to grant franchises.

Sec. 14 Proposes to enable municipalities to continue to regulate utilities within its boundaries, but requires regulation to be consistent with commission rules and standards.

Sec. 15 A municipality regulating utilities within its jurisdiction is given authority to require data from utilities in its jurisdiction.

Sec. 16 Municipalities are given continued authority to select their rate consultants and other experts to investigate, provide evidence and do other matters to assist the municipality with litigation involving rate-making proceedings.

Sec. 17 Authorizes the commission to assist municipalities on regulatory or rate matters pertaining to water and sewer utilities.

Sec. 18 Appeals from municipality rate proceedings are to the commission. Guidelines and time requirements are set forth.

Sec. 19 Requires records to be kept and enables the commission to establish other reporting requirements.

Sec. 20 Proposes to grant the commission power to require reports, set time requirements for them, and establishes other reporting requirements.

Sec. 21 Sets forth authority for inspections, examinations under oath, compelling production of records and inquiring into management affairs of water and sewer utilities.

Sec. 22 Sets forth provisions for report of advertising or public relations expenses, and requires annual reports.

Sec. 23 Unlawful rates are prohibited to be charged by a utility.

Sec. 24 All water and sewer utilities are required to file schedules showing all rates, together with their rules and regulations.

Sec. 25 All water and sewer utilities are required to maintain an office where books and records are to be kept. The books and records may not be removed from the State.

Sec. 26 Communications between the regulatory authority and the utility are required to indicate specific information, set forth by regulation. The communications are to be available to the public on a monthly basis.

Sec. 27 Provides for the regulatory authority to ascertain and fix standards of service for any or all utilities.

Sec. 28 Provides for the checking of equipment by the regulatory authority and for any consumer or user to have any meter or measuring device tested.

Sec. 29 The commission is vested with the power of the State to insure compliance.

Sec. 30 Every rate 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 customer.

Sec. 31 When fixing rates, a utilitiy shall be allowed to recover its operating expenses together with a reasonable return on its invested capital.

Sec. 32 A rate which exceeds more than a fair rate of return on the adjusted value of invested capital used and useful in rendering service shall not be permitted.

Sec. 33 The components of adjusted value of invested capital and net income are set forth.

Sec. 34 Reasonable rates may be set when unreasonable or violative existing rates are discovered. The power of investigation is given to review costs of obtaining service from another source.

Sec. 35 This section concerns statements of intent to change rates; major changes; hearings; suspension of rate schedules; and determination of rate level.

Sec. 36 Rates for areas not within any municipality shall not exceed without commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Sec. 37 No water and sewer utility may grant unreasonable preferences or subject any one unreasonable prejudice as to rates or services.

Sec. 38 Equality of rates and services is required.

Sec. 39 Discrimination is prohibited and utilities are precluded from engaging in any other practice that would restrict or impair competition.

Sec. 40 No payments made in lieu of taxes by a utility to a municipality by which it is owned may be considered an expense of operation when fixing rates. Likewise, no rates received by a utility from a school or hospital district may be used to cover the cost of making payments in lieu of taxes to a municipality which owns the utility.

Sec. 41 Definitions.

Sec. 42 Sets forth provisions for certificates of convenience and necessity for water and sewer utilities.

Sec. 43 Sets forth provisions for requiring a certificate.

Sec. 44 Sets forth provisions for applications for certificates and the filing of maps showing service areas.

Sec. 45 The commission shall issue certificates for construction or operations being conducted.

Sec. 46 Sets forth provisions for notice and hearing on applications for certificates; issuance or refusal; and factors to be considered.

Sec. 47 Sets forth provisions for governing circumstances, for certificate purposes, when an area is included with a city, town, or village.

Sec. 48 Commission-approved contracts between water and sewer utilities and their customers are made enforceable.

Sec. 49 The commission is given authority under this section to issue preliminary orders for certificates.

Sec. 50 A holder of a certificate is charged with the responsibility to provide continuous and adequate service. Provision is made for discontinuing or reducing service.

Sec. 51 Proposes criteria for selling, assigning or leasing a certificate.

Sec. 52 The commission may prohibit interference with one utility by another utility.

Sec. 53 The commisison may order inadequate service upgraded.

Sec. 54 The commission may revoke or amend a certificate.

Sec. 55 Sets forth provisions for reporting sales or mergers; investigations, and disallowance of transactions.

Sec. 56 A utility may not purchase the voting stock of another utility without reporting the purchase to the commission.

Sec. 57 Loans to stockholders must be reported to the commission.

Sec. 58 The commission is given jurisdiction over affiliated interests having transactions with utilities.

Sec. 59 The commission may require disclosure of substantial interests in voting securities.

Sec. 60 A party to a proceeding before the commission is entitled to judicial review.

Sec. 61 Under limited circumstances, a party is entitled to recover costs and attorneys' fees.

Sec. 62 The commission is given authority to seek injunctive relief against violations of its orders and rules.

Sec. 63 The commission is given authority to seek a receivership of a utility that violates its orders.

Sec. 64 Sets forth provisions for the payment of costs of a receivership.

Sec. 65 Civil penalties are provided for violations.

Sec. 66 A person who willfully violates this act is guilty of a third degree felony.

Sec. 67 The commission is entitled to seek contempt in a court when a person refuses to comply with its lawful orders or subpoenas.

Sec. 68 Fines and penalties collected by the commission are to be placed in the general revenue fund.

Sec. 69 Venue for injunction or penalties are set forth.

Sec. 70 The commission's regulatory activities are financed by assessments against the utilities it regulates.

Sec. 71 Sets forth the dates the assessments are due and provides for delinquent penalties.

Sec. 72 All fees, penalties and interest paid under Sections 70 and 71 are to be paid into the general revenue fund.

Sec. 73 The legislature shall approve the commission's budget.

Sec. 74 Sets forth provisions requiring the commission to keep accounting records as required by the state auditor.

Sec. 75 Sets forth provisions for complaints to the commission by an individual.

Sec. 76 The commission must keep records of all proceedings.

Sec. 77 The courts are given authority to stay or suspend any commission order, ruling or decision.

Sec. 78 Proposes the date the commission shall assume regulatory jurisdiction.

Sec. 79 Sets forth provisions for water and sewer utility property to be included in the rate base; sets valuation to be used; and sets forth depreciation expense.

Sec. 80 Effective date: September 1, 1983.

Sec. 81 A liberal construction of the provisions of the Act is to be given by the courts.

Sec. 82 Continues the repeal of conflicting statutes found in PURA, but additionally provides that nothing will interfere with existing commission rate jurisdiction.

Sec. 83 Severability Clause.

Sec. 84 Sets forth provisions for orderly transition of responsibility over water and sewer utilities by giving continued force and effect to actions previously taken by the Public Utility Commission.

Sec. 85 Sets forth provisions for transition, reguiring equipment, data, documents, facilities and other items to be transferred to the commission.

Sec. 86 Sets forth provisions for transition of water and sewer utility matters pending before the Public Utility Commission on the effective date of the Act. The Texas Water Commission may enter into an interagency contract with the Public Utility Commission to have the Public Utility Commission finish processing the pending matters, with final decisions to be made by the Texas Water Commission.

Sec. 87 Emergency Caluse.

Rulemaking Authority

Section 10 grants the Texas Water Commission the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

Section 27 grants the regulatory authority the power to 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 service of any utility.

Section 29 grants the regulatory authority the power to adopt rules and regulations for determining the classification of customers and services and for determining the applicability of rates.

Section 33(c)(3) grants the regulatory authority the power to promulgate reasonable rules and regulations with respect to the allowance and disallowance of certain expenses for ratemaking purposes.

Summary of Committee Action

Public notice was posted in accordance with the Rules of Procedure of the House of Representatives and a public hearing was held on H.B. 1885 (companion to S.B. 884) on April 4, 1983.

On May 12, 1983 the full committee substituted S.B. 884 for H.B. 1885 and voted to report S.B. 884 back to the House without amendments and the recommendation that it do pass by a record vote of 9 ayes and 1 nay.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 18, 1983

Honorable James E. (Pete) Laney, Chair
Committee on State Affairs
House of Representatives
Austin, Texas

In Re: Senate Bill No. 884, as engrossed
By: Traeger

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 884, as engrossed (defining water and sewer utilities and providing for their regulation), this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would transfer the regulation of water and sewer utilities from the Public Utilities Commission to the Texas Water Commission and continue the requirement of an assessment upon public utilities to be paid into the General Revenue Fund.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Reduced General Revenue Fund Appropriations to Public Utility Commission	Increased General Revenue Fund Appropriations to Water Resources Commission	Transfer of State employees
1984	$407,935	$530,870	9
1985	428,909	514,716	9
1986	428,909	514,716	9
1987	428,909	514,716	9
1988	428,909	514,716	9

Similar annual appropriations would continue as long as the provisions of the bill are in effect.

The Department of Water Resources has indicated that they would require a significantly higher appropriation than the one shown above.

No fiscal implication to units of local government is anticipated.

Jim Oliver
Director

Source: Texas Department of Water Resources; Public Utility Commission;
LBB Staff: JO, JH, KH, NRH, DM

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 24, 1983

Honorable John A. Traeger, Chairman
Committee on Intergovernmental Relations
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 884
By: Traeger

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 884 (defining water and sewer utilities and providing for their regulation) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would transfer the regulation of water and sewer utilities from the Public Utilities Commission to the Texas Water Commission and continue the requirement of an assessment upon public utilities to be paid into the General Revenue Fund.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Reduced General Revenue Fund Appropriations to Public Utility Commission	Increased General Revenue Fund Appropriations to Water Resources Commission	Transfer of State employees
1984	-$261,292	+$261,292	6
1985	- 276,264	+ 276,264	6
1986	- 276,264	+ 276,264	6
1987	- 276,264	+ 276,264	6
1988	- 276,264	+ 276,264	6

Similar annual appropriations would continue as long as the provisions of the bill are in effect.

The Department of Water Resources has indicated that they would require a significantly higher appropriation than the one shown above.

No fiscal implication to units of local government is anticipated.

Jim Oliver
Director

Source: Texas Department of Water Resources; Public Utility Commission;
LBB Staff: JO, JH, KH, NRH, PA

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Enrolled May 30, 1983
Patsy Spaw
Enrolling Clerk

S.B. No. 884

AN ACT

relating to the definition of water and sewer utilities and to their regulation; to the jurisdiction, powers and duties, and qualifications of members of the Texas Water Commission; to the jurisdiction and powers of municipalities and the Texas Department of Water Resources and its executive director; to the powers and duties of the general counsel; to rules and considerations for fixing or changing rates and for issuance of certificates of convenience and necessity; providing for hearings and for judicial review; providing for certain assessments and fees; providing enforcement procedures and penalties; repealing conflicting laws.

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

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

SECTION 1. Short Title. This Act may be cited as the "Water and Sewer Utility Regulatory Act."

SECTION 2. Legislative Policy and Purpose. This Act is enacted to protect the public interest inherent in the rates and services of water and sewer utilities. The legislature finds that water and sewer utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore water and sewer utility rates, operations, and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for

such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating water and sewer utilities as defined by this Act to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

SECTION 3. Definitions.

(1) The term "person," when used in this Act 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, as herein defined.

(2) The term "municipality," when used in this Act includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(3) The term "water and sewer utility," "public utility," or "utility" when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use or 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 city, town, or other political subdivision of this state or a water supply or sewer service corporation. The term "water and sewer utility" or "utility" shall 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 such employee service or tenancy, when such service or commodity is not resold to or used by others.

(4) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected whether directly or indirectly by any water or utility for any service, product, or commodity described in Subdivision (3) of this section and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(5) The word "commission," when used in this Act, means the Texas Water Commission, as created and constituted by Section 5.221, Water Code, as amended.

(6) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the Texas Water Commission or the governing body of any municipality.

(7) "Affected person" means any 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 utility with respect to any service performed by the utility or that desires to enter into competition.

(8) "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 such 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 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 such 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 commission, after notice and hearing, determines is actually exercising such substantial influence over the policies and action 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 with such within the meaning of this section, even though no one of them alone is so affiliated.

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

(10) "Commissioner" means a member of the Texas Water Commission.

(11) "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 shall not include municipal corporations unless expressly provided otherwise in this

Act.

(12) "Facilities" means all the plant and equipment of a 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 utility.

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

(16) "Service" is used in this Act in its broadest and most inclusive sense and includes any and all acts done, rendered, or performed and any and all things furnished or supplied and any and all facilities used, furnished, or supplied by utilities in the performance of their duties under this Act to their patrons, employees, other utilities, and the public, as well as the interchange of facilities between two or more of them.

(17) "Test year" means the most recent 12 months for which operating data for a utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(18) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

SECTION 4. Applicability of Administrative Procedure and Texas Register Act. The Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), applies to all proceedings under this Act except to the extent inconsistent with this Act.

ARTICLE II. ORGANIZATION OF COMMISSION

SECTION 5. The Texas Water Commission, as created and implemented by Section 5.221, Water Code, as amended, implement the powers and duties in this Act.

SECTION 6. Employees. (a) The commission shall employ such hearing examiners, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act.

(b) The executive director of the Texas Department of Water Resources shall employ such investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as the executive director deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, the employees shall be paid the same

salary as employees of the Railroad Commission of Texas holding comparable positions.

(c) The executive director of the Texas Department of Water Reosurces shall employ:

(1) a director of water and sewer utilities who has wide experience in water and sewer utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in water and sewer utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in water and sewer utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(d) The general counsel of the Texas Department of Water Resources and his staff are responsible for the gathering of information relating to all matters within the authority of the commission. The duties of the general counsel include:

(1) accumulation of evidence and other information from water and sewer utilities and from the accounting and technical and other staffs of the Texas Department of Water Resources and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of water and sewer utilities

under the jurisdiction of the commission;

(4) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(5) preparation of recommendations and a report of the executive director of the Texas Department of Water Resources for inclusion in the annual report of the commission;

(6) protection and representation of the public interest, together with the public interest advocate of the Texas Department of Water Resources, before the commission; and

(7) such other activities as are reasonably necessary to enable him to perform his duties.

SECTION 7. Orders; Transcript and Exhibits; Public Records. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252--17a, Vernon's Texas Civil Statutes).

SECTION 8. Annual Report. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth

such other information concerning the operations of the commission and the water and sewer utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

SECTION 9. Attorney General to Represent Commission. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts and any court of the United States.

ARTICLE III. JURISDICTION

SECTION 10. General Power; Rules; Hearings. The commission has the general power to regulate and supervise the business of every water and sewer utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The 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 the provisions of this Act or the rules, orders, or other actions of the commission.

SECTION 11. Jurisdiction of Municipality; Surrender; Original and Appellate Jurisdiction of Commission. (a) Subject to the limitations imposed in this Act and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over water or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or 10 percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time by vote of the electorate reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may by vote of the electorate reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

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

(e) The 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 Act.

SECTION 12. Municipality-Owned Utilities. Nothing in this article shall be construed to confer on the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate land and supervise water and sewer utilities within their boundaries, except

as provided in this Act.

ARTICLE IV. MUNICIPALITIES

SECTION 13. Franchises. Nothing in this Act shall 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 the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

SECTION 14. Local Utility Service; Exempt and Nonexempt Areas. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act 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 commission or other standards and rules not inconsistent therewith. Notwithstanding any such election, the 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 Act 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. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 15. Rate Determination. Any municipality regulating its water and sewer utilities pursuant to this Act shall require from those utilities all neccessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

SECTION 16. Authority of Governing Body; Cost Reimbursement. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof to conduct investigations, present evidence, advise and represent the

governing body, and assist with litigation on water and sewer utility ratemaking proceedings; and the water and sewer utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services.

SECTION 17. Assistance by Commission. The commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such assistance may include aid to municipalities in connection with matters pending before the commission, the courts, or the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence to them.

SECTION 18. Appeal. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission and copies served on all parties to the original rate proceeding.

(d) The commission shall hear such appeal de novo and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

SECTION 19. 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 commission uniform accounts of all business transacted. The commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such 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 which in the judgment of the commission may be necessary to carry out any of the provisions of this Act. In the case of any utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission; provided, however, that the 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 commission for a utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(b) The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several

1 classes of property of each utility and shall require every utility
2 to carry a proper and adequate depreciation account in accordance
3 with such rates and methods and with such other rules and
4 regulations as the commission prescribes. Such rates, methods, and
5 accounts shall be utilized uniformly and consistently throughout
6 the rate-setting and appeal proceedings.
7 (c) Every utility shall keep separate accounts to show all
8 profits or losses resulting from the sale or lease of appliances,
9 fixtures, equipment, or other merchandise. No such profit or loss
10 shall be taken into consideration by the regulatory authority in
11 arriving at any rate to be charged for service by any such utility
12 to the extent that such merchandise is not integral to the
13 provision of utility service.
14 (d) Every utility is required to keep and render its books,
15 accounts, records, and memoranda accurately and faithfully in the
16 manner and form prescribed by the commission and to comply with all
17 directions of the regulatory authority relating to such books,
18 accounts, records, and memoranda. The regulatory authority may
19 require the examination and audit of all accounts.
20 (e) In determining the allocation of tax savings derived
21 from application of such methods as liberalized depreciation and
22 amortization and the investment tax credit, the regulatory
23 authority shall equitably balance the interests of present and
24 future customers and shall apportion such benefits between
25 consumers and the utilities accordingly. Where any portion of the
26 investment tax credit has been retained by a utility, that same

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.

(f) For the purposes of this section, "utility" includes "municipally owned utility."

SECTION 20. Powers of Commission. (a) The commission shall have the power to:

(1) require that water and sewer utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(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; it may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(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) 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 commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

SECTION 21. 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 shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records and to inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath or it may authorize the person conducting such investigation to examine under oath any officer, agent, or employee of any utility in connection with such investigation. 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 in lieu thereof if the commission so orders. Any utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b) (1) 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 Act.

(2) 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.

(3) 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 commencing an inspection, examination, or test.

(c) 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 the same are conducted.

SECTION 22. Reporting of Advertising or Public Relations Expenses. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment and institutional, consumption-inducing, and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which 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 rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

SECTION 23. Unlawful Rates, Rules, and Regulations. It shall be unlawful for any utility to charge, collect, or receive any rate for utility service or to impose any rule or regulation

other than as herein provided.

SECTION 24. Filing Schedule of Rates, Rules, and Regulations. Every utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any utility service, product, or commodity offered by the utility. Every utility shall file with and as a part of such schedules all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by such utility.

SECTION 25. Office of Utility; Records; Removal From State. Every utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission.

SECTION 26. Communications by Utilities With Regulatory Authority; Regulations and Records. (a) The regulatory authority shall 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.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities

1 represented, a brief description of the subject matter of the
2 communication, and the action, if any, requested by the utility,
3 affiliate, or representative. These records shall be available to
4 the public on a monthly basis.

5 SECTION 27. Standards of Service. (a) Every utility shall
6 furnish such service, instrumentalities, and facilities as shall be
7 safe, adequate, efficient, and reasonable.

8 (b) The regulatory authority after reasonable notice and
9 hearing had on its own motion or on complaint may ascertain and fix
10 just and reasonable standards, classifications, regulations, or
11 practices to be observed and followed by any or all utilities with
12 respect to the service to be furnished; ascertain and fix adequate
13 and reasonable standards for the measurement of the quantity,
14 quality, pressure, or other condition pertaining to the supply of
15 the service; prescribe reasonable regulations for the examination
16 and testing of the service and for the measurement thereof; and
17 establish or approve reasonable rules, regulations, specifications,
18 and standards to secure the accuracy of all meters, instruments,
19 and equipment used for the measurement of any service of any
20 utility. Any standards, classifications, regulations, or practices
21 now or hereafter observed or followed by any utility may be filed
22 by it with the regulatory authority, and the same shall continue in
23 force until amended by the utility or until changed by the
24 regulatory authority as herein provided.

25 SECTION 28. Examination and Test of Equipment. (a) The
26 regulatory authority may examine and test any meter, instrument, or

equipment used for the measurement of any service of any utility and may enter any premises occupied by any utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The utility shall have the right to be represented at the making of the examinations, tests, and inspections. 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 the duties aforesaid.

(b) Any consumer or user may have any 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 such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such 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 such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

SECTION 29. Power to Ensure Compliance; Rate Regulation. Subject to the provisions of this Act, the commission is hereby vested with all authority and power of the State of Texas to ensure compliance with the obligations of utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of water and sewer utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

SECTION 30. Just and Reasonable Rates. It shall be the duty of the regulatory authority to ensure that every rate made, demanded, or received by any utility or by any two or more 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 consumers. For rate-making purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission deems such treatment to be appropriate.

SECTION 31. Fixing Overall Revenues. In fixing the rates of a utility the regulatory authority shall fix its overall revenues

at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

SECTION 32. Fair Return; Burden of Proof. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof 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 shall be on the utility.

SECTION 33. Components of Invested Capital and Net Income. The components of invested capital and net income shall be determined according to the following rules:

(a) Invested Capital. Utility rates shall be based upon the original cost of property used by and useful to the utility in providing service, including where 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 upon the demonstration by the utility by clear and convincing evidence that such inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned

or managed. Invested capital 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 which is the present owner or by a predecessor, less depreciation.

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

(c) Net Income. By "net income" is meant the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall 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.

(2) Income Taxes. 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 so 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 by reason of 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 the property or services so purchased. 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 such credit applies to the extent and at such rate as allowed by the Internal Revenue Code.

(3) Expenses Disallowed. The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for rate-making purposes.

SECTION 34. Unreasonable or Violative Existing Rates; Investigating Costs of Obtaining Service From Another Source. Whenever 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 provision of law, the regulatory authority shall determine the just and reasonable

rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the utility; and such rates shall constitute the legal rates of the utility until changed as provided in this Act. Whenever a utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such utility.

SECTION 35. Statement of Intent to Change Rates; Major Changes; Hearing; Suspension of Rate Schedule; Determination of Rate Level. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a

newspaper having general circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations. Provided, however, nothing in this subsection shall apply to a water or sewer utility that:

(1) has fewer than 150 customers; and

(2) is not a member of a group filing a consolidated tax return; and

(3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rates to take effect prior to the end of such 35-day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the regulatory authority any schedule modifying or resulting in a change in any rates then in force, the regulatory authority shall on complaint by any affected person or may on its own motion, at any time within 30

days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The regulatory authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the regulatory authority finds that a longer time will be required for a final determination, the regulatory authority may further extend the period for an additional 30 days. If the regulatory authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the

regulatory authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the regulatory authority shall establish a temporary rate. The regulatory authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the regulatory authority finds the rates to be unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

(g) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

SECTION 36. Rates for Areas not Within Municipality. Water and sewer utility rates for areas not within any municipality shall not exceed without commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

SECTION 37. Unreasonable Preference or Prejudice as to Rates or Services. No water and sewer utility may as to rates or services 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. No utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

SECTION 38. Equality of Rates and Services. No water and sewer utility may directly or indirectly by any device whatsoever or in any manner charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided in this Act, nor may any person 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 upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall 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.

SECTION 39. Discrimination; Restriction on Competition. No water and sewer utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, nor may any utility engage in any other practice that tends to restrict or impair such competition.

SECTION 40. Payments in Lieu of Taxes. No payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may 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.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

SECTION 41. Definitions. For the purposes of this article only:

(1) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail water and sewer utility service.

(2) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation who is providing utility services other than water and sewer services and who are under the jurisdiction of the Railroad Commission of Texas or the Public Utility Commission of Texas after the effective date of this Act. For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

SECTION 42. Certificate Required. Upon the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without

first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 43. Exceptions for Extension of Service. (a) A 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 and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(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; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility

service.

SECTION 44. Application; Maps; Evidence and Consent. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

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

SECTION 45. Prior Construction or Operation. On application made to the commission, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility or retail public utility actually providing service to any geographical area on September 1, 1975, or to any person or corporation actively engaged on September 1, 1975, in the construction, installation, extension, or improvement of or addition to any facility or system used or to be used in providing public utility service.

SECTION 46. Notice and Hearing; Issuance or Refusal; Factors

Considered. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 45, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

SECTION 47. Area Included Within City, Town, or Village.

(a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the 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 cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

SECTION 48. Contracts Valid and Enforceable. Contracts between retail public utilities designating areas to be served and

customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

SECTION 49. Preliminary Order for Certificate. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will on application under such rules as it prescribes issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

SECTION 50. Continuous and Adequate Service; Discontinuance, Reduction, or Impairment of Service. (a) The holder of any 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 commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

(1) nonpayment of charges;

(2) nonuse; or

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

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

SECTION 51. Sale, Assignment, or Lease of Certificate. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

SECTION 52. Interference With Other Public Utility. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

SECTION 53. Improvements in Service; Interconnecting Service. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable

area and it is reasonable to require the company to provide such improved service; and

(2) order two or more public utilities to establish specified facilities for the interconnecting service.

SECTION 54. Revocation or Amendment of Certificate. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

SECTION 55. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction. No utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000 or merge or consolidate with another utility operating in this state unless the utility reports such transaction to the commission within a reasonable time. On the filing of a report with the commission, the commission shall investigate the same with or without public hearing to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, or

consolidated. If the commission finds that such transactions are not in the public interest, the commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the utility by construction.

SECTION 56. Purchase of Voting Stock in Another Public Utility: Report. No utility may purchase voting stock in another utility doing business in Texas, unless the utility reports such purchase to the commission.

SECTION 57. Loans to Stockholders: Report. No utility may 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 commission within a reasonable time.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

SECTION 58. Jurisdiction Over Affiliated Interests. The commission shall have jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of such 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 such transactions.

SECTION 59. Disclosure of Substantial Interest in Voting Securities. The 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.

ARTICLE X. JUDICIAL REVIEW

SECTION 60. Right to Judicial Review; Evidence. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

SECTION 61. Costs and Attorneys' Fees. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive and who is a prevailing party in proceedings for review of a commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harrassment, the court may award to the defendant utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

SECTION 62. Action to Enjoin or Require Compliance.

Whenever it appears to the commission that any utility or any other person or corporation is engaged in or is about to engage in any act in violation of this Act or of any order, rule, or regulation of the commission entered or adopted under the provisions of this Act or that any utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against such utility or other person or corporation to enjoin the commencement or continuation of any such act or to require compliance with such Act, rule, regulation, or order.

SECTION 63. Receivership. (a) At the request of 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 violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or 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) Upon 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.

SECTION 64. 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 real or personal property or any part thereof of a water or sewer utility against which a proceeding has been brought under this article for the purpose of paying for the costs incurred in the operation of the receivership. Said costs shall include but are not limited to the payment of fees to the receiver for his services; payment of fees to attorneys, accountants, engineers, or any other person or entity which provides goods or services necessary to the operation of the receivership; 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 commission.

SECTION 65. Penalty Against Utility or Affiliated Interest. (a) Any utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or

fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or decree or judgment of a court shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each offense.

(b) A utility or affiliated interest commits a separate offense each day it continues to violate the provisions of 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 commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 66. Personal Penalty. (a) Any person or persons who wilfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution against any utility or any officer, director, agent, or employee thereof or any other corporation or person.

SECTION 67. Contempt Proceedings. If any person fails to comply with any lawful order of 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 commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 68. Disposition of Fines and Penalties. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission and paid by the commission to the State Treasury to be placed in the General Revenue Fund.

SECTION 69. Venue. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

SECTION 70. Assessments Upon Public Utilities. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

SECTION 71. Payment Dates; Delinquency. All assessments shall be due on August 15 of each year. Any utility may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of 10 percent per annum on the assessment and penalty

due.

SECTION 72. Collection and Payment Into General Revenue Fund. All fees, penalties, and interest paid under the provision of Sections 70 and 71 of this article shall be collected by the comptroller of public accounts and paid into the General Revenue Fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 70 when made.

SECTION 73. Approval of Budget. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

SECTION 74. Accounting Records; Audit. The commission shall keep such accounting records as required by the State Auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

SECTION 75. Complaint by any Affected Person. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer or of any order, ordinance, rule, or regulation of the regulatory authority.

SECTION 76. Record of Proceedings; Right to Hearing. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

SECTION 77. Judicial Stay or Suspension of Order, Ruling, or

Decision. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend in whole or in part the operation of the regulatory authority order, ruling, or decision, and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

SECTION 78. Assumption of Jurisdiction. The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on September 1, 1983.

SECTION 79. Certain Water and Sewer Utility Property Included in Rate Base; Valuation Used; Depreciation Expense. (a) The provisions of this section apply notwithstanding any other provision of this Act.

(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all rate-making formulae and 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 shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

SECTION 80. Effective Date. This Act shall become effective

on September 1, 1983, and the commission shall thereupon exercise the powers and duties conferred upon it as provided in this Act.

SECTION 81. Liberal Construction. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of water and sewer utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

SECTION 82. Repealer. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes); Article 1446c, Vernon's Texas Civil Statutes, 1980, as amended, and all other laws and parts of laws to the extent that same conflict with this Act are repealed effective September 1, 1983.

(b) Nothing in this Act shall affect the jurisdiction of the commission or the Texas Department of Water Resources otherwise afforded under Sections 11.036, 11.041, 12.013, and 50.275, Water Code.

SECTION 83. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 84. The purpose of this Act is to transfer water and sewer utility regulation existing under the Public Utility Regulatory Act, as amended (Article 1446c, Vernon's Texas Civil Statutes), to the Texas Water Commission, and nothing herein is intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of that exercised by the Public Utility Commission of Texas prior to the effective date of this Act. Further, nothing herein is 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 shall 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, as amended, and such prior action or authority shall be treated as still remaining 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 commenced prior to the effective date of this Act shall be affected by its enactment.

SECTION 85. On the effective date of this Act, all equipment, data, documents, facilities, and other items pertaining to water and sewer utilities of the Public Utility Commission of Texas shall be transferred to the Texas Water Commission.

SECTION 86. On the effective date of this Act, the Texas Water Commission shall implement the powers and duties delegated to it. The commission is authorized, to the extent it deems advisable and under such terms and conditions deemed necessary and desirable, to contract with the Public Utility Commission of Texas to provide for the disposition of any and all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas on the effective date of this Act, 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 the provisions of 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, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), which, together with the record, shall be tendered to the Texas Water Commission for final decision.

SECTION 87. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its

passage, and it is so enacted.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 884 passed the Senate on May 5, 1983, by the following vote: Yeas 26, Nays 4.

Secretary of the Senate

I hereby certify that S.B. No. 884 passed the House on May 28, 1983, by the following vote: Yeas 121, Nays 25, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 18, 1983

Honorable James E. (Pete) Laney, Chair
Committee on State Affairs
House of Representatives
Austin, Texas

In Re: Senate Bill No. 884, as engrossed
By: Traeger

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 884, as engrossed (defining water and sewer utilities and providing for their regulation), this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would transfer the regulation of water and sewer utilities from the Public Utilities Commission to the Texas Water Commission and continue the requirement of an assessment upon public utilities to be paid into the General Revenue Fund.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Reduced General Revenue Fund Appropriations to Public Utility Commission	Increased General Revenue Fund Appropriations to Water Resources Commission	Transfer of State employees
1984	$407,935	$530,870	9
1985	428,909	514,716	9
1986	428,909	514,716	9
1987	428,909	514,716	9
1988	428,909	514,716	9

Similar annual appropriations would continue as long as the provisions of the bill are in effect.

The Department of Water Resources has indicated that they would require a significantly higher appropriation than the one shown above.

No fiscal implication to units of local government is anticipated.

Jim Oliver
Director

Source: Texas Department of Water Resources; Public Utility Commission;
LBB Staff: JO, JH, KH, NRH, DM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 24, 1983

Honorable John A. Traeger, Chairman
Committee on Intergovernmental Relations
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 884
By: Traeger

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 884 (defining water and sewer utilities and providing for their regulation) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would transfer the regulation of water and sewer utilities from the Public Utilities Commission to the Texas Water Commission and continue the requirement of an assessment upon public utilities to be paid into the General Revenue Fund.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Reduced General Revenue Fund Appropriations to Public Utility Commission	Increased General Revenue Fund Appropriations to Water Resources Commission	Transfer of State employees
1984	-$261,292	+$261,292	6
1985	- 276,264	+ 276,264	6
1986	- 276,264	+ 276,264	6
1987	- 276,264	+ 276,264	6
1988	- 276,264	+ 276,264	6

Similar annual appropriations would continue as long as the provisions of the bill are in effect.

The Department of Water Resources has indicated that they would require a significantly higher appropriation than the one shown above.

No fiscal implication to units of local government is anticipated.

Jim Oliver
Director

Source: Texas Department of Water Resources; Public Utility Commission;
LBB Staff: JO, JH, KH, NRH, PA

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME: June 19, 1983

Pursuant to Article IV, Section 14 of the Constitution of Texas, I hereby veto Senate Bill 884 because of the following objection:

Because of recent reforms of the Public Utilities Commission, I feel the interests of the consumers of this state are best served by the continued regulation of water and sewer utilities by this entity.

Therefore, I veto SB 884.

Respectfully,

Mark White
Governor of Texas

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
9:50 PM O'CLOCK

JUN 19 19

Secretary of State

Secretary of State

S.B. No. 884 By Traeger

AN ACT defining water and sewer utilities and providing for their regulation and declaring an emergency.

3-9-83 Filed with the Secretary of the Senate

MAR 10 1983 Read, referred to Committee on INTERGOVERNMENTAL RELATIONS

MAR 24 1983 Reported favorably. as amended

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

MAY 5 1983 Senate and Constitutional Rules to permit consideration suspended by { unanimous consent. / ____ yeas, ____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of ____ yeas, ____ nays.

MAY 5 1983 Read second time and { amended ordered engrossed. / ~~passed to third reading.~~

MAY 5 1983 Caption ordered amended to conform to body of bill.

MAY 5 1983 Senate and Constitutional 3-Day Rules suspended by vote of 26 yeas, 4 nays to place bill on third reading and final passage.

MAY 5 1983 Read third time and passed by { ~~a viva voce vote.~~ / 26 yeas, 4 nays.

OTHER ACTION:

Betty King
Secretary of the Senate

May 5, 1983 Engrossed

5-5-83 Sent to HOUSE

Patsy Spaw
ENGROSSING CLERK

MAY 5 1983 Received from the Senate

MAY 5 1983 Read first time and referred to Committee on State Affairs

5.12 Reported favorably ~~amended~~, sent to Printer at 5:30 5.18

5.19 Printed and Distributed 5:54 pm

5.20 Sent to Committee on Calendars 8:38 am

MAY 27 1983 Motion to table SB 884 failed by record vote 32 yeas 19 nays 4 pnv

MAY 27 1983 Read Second time (~~amended~~): passed to third reading (failed)

by (~~Non Record Vote~~) Record Vote of 108 yeas, 34 nays

4 Present, not voting.

____ Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of ____ yeas ____ nays ____ present not voting.

MAY 28 1983 Read third time (~~amended~~); finally passed (~~failed~~) by a (~~Non-Record Vote~~) Record Vote of 121 yeas 25 nays 2 present not voting.

____ Caption ordered amended to conform to body of bill.

MAY 28 1983 Returned to Senate.

Betty Murray
Chief Clerk of the House

MAY 26 1983

Motion to postpone further consideration of SB No. 884 until Friday May 27 at 9AM prevailed by a non-record vote.

MAY 28 1983 RETURNED FROM HOUSE