

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 661
By: Nichols, Hegar
Government Organization
4/6/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 661 enacts Sunset Advisory Commission recommendations regarding the Public Utility Commission (PUC), the Electric Reliability Council of Texas (ERCOT), and the Office of Public Utility Counsel (OPUC). PUC oversees electric and telecommunications companies in Texas. Since PUC's creation in 1975, its focus has evolved from regulating monopoly utilities to include oversight of restructured and deregulated aspects of telecommunications and electric utilities. ERCOT manages the electric grid for most of Texas. ERCOT is primarily regulated by PUC and is governed by a 16-member board of directors as a nonprofit corporation. OPUC, created by the legislature in 1983, is an independent agency established to represent the interests of residential and small commercial customers in state electric and telecommunication utility matters.

The Sunset Advisory Commission found that Texas has a continuing need for these organizations. This bill continues PUC and OPUC, changing their Sunset dates from 2011 to 2023, and requires that ERCOT be reviewed under Sunset at the same time as PUC.

PUC and OPUC are governed primarily by the Public Utility Regulatory Act, which also provides oversight of ERCOT as an "independent organization" responsible for reliability of the electric network and accounting for production and delivery of electricity. As a nonprofit corporation, ERCOT also has adopted bylaws, subject to PUC approval, directing its internal operations.

C.S.S.B. 661 amends current law relating to the continuation and functions, as applicable, of ERCOT, OPUC, and PUC and to the transfer of certain functions from TCEQ to PUC, and imposes an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas (PUC) in SECTION 1.04 (Section 15.023, Utilities Code), SECTION 1.05 (Sections 15.102 and 15.104, Utilities Code), SECTION 1.06 (Section 39.151, Utilities Code), SECTION 1.09 (Section 15.1035, Utilities Code), SECTION 1.11 (Section 58.255, Utilities Code), SECTION 1.12 (Section 59.074, Utilities Code), and SECTION 2.06 (Section 13.041, Water Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is modified in SECTION 2.06 (Section 13.041, Water Code) of this bill.

Rulemaking authority previously granted to TCEQ is transferred to PUC in SECTION 2.10 (Section 13.046, Water Code), SECTION 2.15 (Section 13.131, Water Code), SECTION 2.18 (Section 13.136, Water Code), SECTION 2.19 (Section 13.137, Water Code), SECTION 2.22 (Section 13.142, Water Code), SECTION 2.25 (Section 13.181, Water Code), SECTION 2.26 (Section 13.182, Water Code), SECTION 2.28 (Section 13.184, Water Code), SECTION 2.30 (Section 13.188, Water Code), SECTION 2.32 (Section 13.242, Water Code), SECTION 2.44 (Section 13.254, Water Code), SECTION 2.45 (Section 13.255, Water Code), SECTION 2.51 (Section 13.304, Water Code), SECTION 2.69 (Section 13.503, Water Code), and SECTION 2.70 (Section 13.5031, Water Code) of this bill.

Rulemaking authority is expressly granted to the Office of Public Interest Counsel of TCEQ and the Office of Public Utility Counsel, jointly, in SECTION 2.77 of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GENERAL PROVISIONS RELATING TO PUC, ERCOT, AND OPUC

SECTION 1.01. Amends Section 12.005, Utilities Code, to provide that the Public Utility Commission of Texas (PUC), unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, or by Chapter 39 (Restructuring of Electric Utility Industry), is abolished and this title expires September 1, 2023, rather than September 1, 2011.

SECTION 1.02. Amends Section 12.155, Utilities Code, by adding Subsection (d), as follows:

(d) Prohibits a member of PUC (commissioner) from being employed by an independent organization certified under Section 39.151 (Essential Organizations). Provides that the prohibition under this subsection applies until the second anniversary of the date the commissioner ceases to serve as a commissioner.

SECTION 1.03. Amends Section 13.002, Utilities, Code, to provide that the Office of Public Utility Counsel (OPUC), unless continued in existence as provided by Chapter 325, Government Code, is abolished and this chapter expires September 1, 2023, rather than September 1, 2011.

SECTION 1.04. Amends Section 15.023, Utilities Code, by amending Subsections (b), (c), and (d) and adding Subsections (b-1) and (b-2), as follows:

(b) Creates an exception to this subsection under Subsection (b-1).

(b-1) Authorizes the penalty for a violation of a reliability standard adopted by the independent organization certified under Section 39.151 or of a PUC rule relating to reliability in the wholesale electric market to be in an amount not to exceed \$100,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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

(1) PUC is prohibited from assessing an administrative penalty for the same instance or circumstance for which the person paid the federal penalty; and

(2) PUC is required to refund the full amount of an administrative penalty that PUC assessed against the person before the date the person paid the federal penalty, if PUC assessed the penalty for the same instance or circumstance for which the person paid the federal penalty.

(c) Requires PUC by rule to establish a classification system for violations described by Subsection (b) (relating to a maximum penalty of \$25,000) and a separate classification system for violations described by Subsection (b-1). Requires that each system include a range of administrative penalties that may be assessed for each class of violation, based on certain criteria.

(d) Provides that this subsection does not apply to the classification system established under Subsection (c) for a violation described by Subsection (b-1).

SECTION 1.05. Amends Chapter 15, Utilities Code, by adding Subchapter D, as follows:

SUBCHAPTER D. CEASE AND DESIST ORDERS

Sec. 15.101. APPLICATION OF SUBCHAPTER. Provides that this subchapter applies only to a person to whom Subtitle B (Electric Utilities) applies.

Sec. 15.102. RULES. Requires PUC to adopt rules to implement this subchapter.

Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. Authorizes PUC to proceed solely under this subchapter or under this subchapter in conjunction with other applicable law.

Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) Authorizes PUC on its own motion to issue a cease and desist order:

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

(2) if PUC determines that the conduct of a person poses a threat to continuous and adequate electric service, is fraudulent, is hazardous, creates an immediate danger to the public safety, or is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by monetary compensation.

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

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

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

(1) contains a statement of the charges; and

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

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

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

(b) Authorizes the person affected by an order under this subchapter, if PUC issues the order without a hearing, to request a hearing to affirm, modify, or set aside the order. Requires that a request be submitted not later than the 30th day after the date the person receives the order. Requires PUC to set the hearing for a date that is:

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

(2) agreed to by the person and PUC.

(c) Requires PUC, at or following the hearing, to wholly or partly affirm, modify, or set aside the order. Provides that if the person affected by an order does not request a hearing in the manner provided by Subsection (b), and PUC does not hold a hearing on the order, the order is affirmed without further action by PUC.

(d) Authorizes PUC to hold a hearing under this subchapter or to authorize the State Office of Administrative Hearings (SOAH) to hold the hearing.

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

Sec. 15.108. ADMINISTRATIVE PENALTY. Authorizes PUC to impose an administrative penalty under Subchapter B (Enforcement and Penalties) against a person who violates an order issued under this subchapter.

SECTION 1.06. Amends Section 39.151, Utilities Code, by amending Subsections (d-1), (e), and (g) and adding Subsections (d-2), (d-3), (d-4), (e-1), (g-2), (g-3), and (n), as follows:

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

(d-2) Requires an independent organization certified by PUC under this section to submit to PUC for review and approval proposals for obtaining debt financing or for refinancing existing debt. Authorizes PUC to approve, disapprove, or modify a proposal.

(d-3) Requires an independent organization certified by PUC under this section to develop proposed performance measures to track the organization's operations. Requires the independent organization to submit the proposed performance measures to PUC for review and approval. Requires PUC to review annually the organization's performance as part of the budget review process under Subsection (d-1). Requires PUC to prepare an annual report detailing the organization's performance and submit the report to the lieutenant governor, the speaker of the house of representatives, and each house and senate standing committee that has jurisdiction over electric utility issues.

(d-4) Creates this subsection from existing Subsection (d).

(e) Requires PUC, after approving the budget of an independent organization under Subsection (d-1), to authorize the organization to charge to wholesale buyers and sellers a system administration fee, within a range determined by PUC, that is reasonable and competitively neutral to fund the independent organization's approved budget. Requires PUC to investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and authorizes PUC to require the organization to provide any information needed to effectively evaluate the reasonableness and neutrality of the fee, rather than a rate or proposed rate, or to evaluate the effectiveness or efficiency of the organization. Requires PUC to require the independent organization to closely match actual revenues generated by the fee with revenue necessary to fund the budget and make quarterly fee adjustments to ensure that the budget year does not end with surplus or insufficient funds. Requires PUC to require the organization to submit to PUC quarterly reports that compare actual expenditures with budgeted expenditures. Deletes existing text authorizing PUC to authorize an independent organization that is certified under this section to charge a reasonable and competitively neutral rate to wholesale buyers and sellers to cover the independent organization's costs. Makes nonsubstantive and conforming changes.

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

(g) Requires the governing body of an independent organization under this section to be composed of:

- (1) one member unaffiliated with any market segment and selected by PUC, who may be a former commissioner, to serve a three-year term, rather than the chairman of PUC as an ex officio nonvoting member;
- (2) one member representing residential and small commercial consumer interests and selected by the counsellor to serve a one-year term, rather than the counsellor as an ex officio voting member representing residential and small commercial consumer interests;
- (3) the chief executive officer of the independent organization as an ex officio voting member;
- (4) six market participants elected by their respective market segments to serve one-year terms, with one representing independent generators; one representing investor-owned utilities; one representing power marketers; one representing retail electric providers; one representing municipally owned utilities; and one representing electric cooperatives;
- (5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term;
- (6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term;
- (7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms; and
- (8) one member unaffiliated with any market segment who possesses financial expertise and is selected by the other members of the governing body to serve a three-year term.

(g-2) Requires the governing body of an independent organization under this section, to maintain certification as an independent organization, to establish and implement a formal process for adopting new protocols or revisions to existing protocols. Requires that the process require that:

- (1) a majority of the organization's governing body initiate the creation or revision of protocols; and
- (2) the organization's staff develop the new or revised protocols and submit the protocols to the governing body for adoption.

(g-3) Requires the governing body of an independent organization certified by PUC under this section, in accordance with formal bylaws or protocols adopted by the organization and approved by PUC, to establish and maintain an advisory committee whose membership is broadly representative of the organization's members to assist the organization's governing body and staff in developing or revising protocols or in performing the organization's other duties and functions. Provides that this subsection does not prohibit the governing body of the organization from appointing one or more additional committees or subcommittees to assist the organization's governing body and staff in performing the organization's duties and functions.

(n) Provides that an independent organization certified by PUC under this section is subject to review under Chapter 325 (Texas Sunset Act), Government Code, but is not abolished under that chapter. Requires the independent organization to be reviewed during the periods in which PUC is reviewed.

SECTION 1.07. Amends Section 39.1515(c), Utilities Code, to require the independent organization to use money from the fee, rather than rate, authorized by Section 39.151(e) to pay for the market monitor's activities.

SECTION 1.08. Amends Section 52.057, Utilities Code, by amending Subsections (a), (b), and (c) and adding Subsections (c-1) and (d-1), as follows:

(a) Provides that this section applies only to a customer-specific contract, rather than requires PUC to approve a consumer-specific contract that meets the requirements of Subsection (b), to provide:

- (1) central office based PBX-type services for a system of 200 stations or more;
- (2) billing and collection services;
- (3) high-speed private line services of 1.544 megabits or greater; or
- (4) customized services.

(b) Authorizes PUC to require an incumbent local exchange company to submit the company's customer-specific contract to PUC for review. Deletes existing text requiring PUC to approve a contract for a service described by Subsection (a) if the contract is filed before the 30th day before the date the service contracted for is initiated, the contract is accompanied by an affidavit from the person or entity contracting for the service stating that the person or entity considered acquiring the same, equivalent, or substitutable service by bid or quotation from a source other than the incumbent local exchange company, the incumbent local exchange company recovers the appropriate costs of providing the service, and approval of the contract is in the public interest.

(c) Authorizes an affected party to request in writing that PUC review a customer-specific contract. Authorizes PUC by rule to establish guidelines for submitting a request. Deletes existing text requiring PUC to approve or deny a contract under this section not later than the 30th day after the date the contract is filed, unless PUC for good cause extends the effective date for an additional 35 days.

(c-1) Authorizes PUC by rule to establish the criteria PUC will consider when reviewing a customer-specific contract.

(d-1) Requires PUC by rule to prescribe the period during which an incumbent local exchange company must keep a record of a customer-specific contract to which the company is a party.

SECTION 1.09. Amends Subchapter C, Chapter 52, Utilities Code, by adding Section 52.1035, as follows:

Sec. 52.1035. RENEWAL OF CERTAIN REGISTRATIONS OR CERTIFICATES. (a) Requires PUC by rule to require each interexchange telecommunications utility, holder of a certificate of operating authority, and holder of a service provider certificate of operating authority to file with PUC on a one-time or regular basis:

- (1) the utility's or holder's name;
- (2) the utility's or holder's address; and
- (3) the most recent version of each annual report PUC requires the utility or holder to file under this subtitle.

(b) Requires that the rules:

- (1) require PUC to automatically allow a utility or holder an extension of a filing deadline for the number of days prescribed by the rule, as applicable; and
- (2) state that the registration or certificate of a utility or holder will not be valid after the last day of the automatic extension period described by Subdivision (1) if the utility or holder does not file information required by PUC under this section by the end of the automatic extension period.

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

SECTION 1.10. Amends Subchapter B, Chapter 55, Utilities Code, by adding Section 55.026, as follows:

Sec. 55.026. NEW ORDERS PROHIBITED AFTER A CERTAIN DATE. Prohibits PUC, on or after September 1, 2011, from ordering a local exchange company that is a dominant carrier to provide mandatory or optional extended area service to additional metropolitan areas or calling areas under this subchapter.

SECTION 1.11. Amends Section 58.255, Utilities Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Authorizes PUC to require an electing company to file a private network service contract with PUC. Requires PUC to require an electing company to file the company's contract with PUC on the written request of an entity described by Section 58.253(a) (relating to an electing company providing private network services to certain entities). Deletes existing text requiring that each contract be filed with PUC.

(e) Requires PUC by rule to prescribe the period during which an electing company must keep a record of a private network service contract to which the company is a party.

SECTION 1.12. Amends Section 59.074, Utilities Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Authorizes PUC to require an electing company to file a private network service contract with PUC. Requires PUC to require an electing company to file the company's contract with PUC on the written request of an entity described by Section 59.072(a) (relating to providing services on request to certain entities). Deletes existing text requiring that each contract be filed with PUC.

(d) Requires PUC by rule to prescribe the period during which an electing company must keep a record of a private network service contract to which the company is a party.

SECTION 1.13. Requires PUC to adopt rules to implement the filing process required by Section 52.1035, Utilities Code, as added by this article, as soon as practicable. Requires that the rules specify whether PUC will require that an interexchange telecommunications utility, holder of a certificate of operating authority, or holder of a service provider certificate of operating authority file the information required by Section 52.1035, Utilities Code, as added by this article, once or on a regular basis. Requires each utility or holder, regardless of the frequency of filing required, to file the information required by Section 52.1035, Utilities Code, as added by this article, not later than January 1, 2012. Requires that the rules, if PUC requires regular filings, specify the timing of the subsequent filings.

SECTION 1.14. Makes application of the change in law made by this article to Section 15.023 (Administrative Penalty), Utilities Code, prospective.

ARTICLE 2. WATER AND SEWER UTILITIES

SECTION 2.01. Amends Section 13.002, Water Code, by amending Subdivisions (2) and (18) and adding Subdivision (22-a), as follows:

(2) Redefines "affiliated interest" and "affiliate" in this chapter to mean certain entities, including any person or corporation that PUC, rather than the Texas Commission on Environmental Quality (TCEQ), after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or any person or corporation that PUC, rather than TCEQ, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(18) Redefines "regulatory authority" in this chapter to mean, in accordance with the context in which it is found, either TCEQ, PUC, or the governing body of a municipality.

(22-a) Defines "utility commission" in this chapter.

SECTION 2.02. Amends Section 13.004, Water Code, as follows:

Sec. 13.004. New heading: JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Provides that, notwithstanding any other law, PUC, rather than TCEQ, has the same jurisdiction over a water supply or sewer service corporation that PUC has under this chapter over a water and sewer utility if PUC finds that the water supply or sewer service corporation meets certain criteria. Makes conforming changes.

(b) Makes a conforming change.

SECTION 2.03. Amends Section 13.011, Water Code, as follows:

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

(b) Provides that the executive director of PUC and PUC's staff are responsible for the gathering of information relating to all matters within the jurisdiction of PUC under this subchapter. Provides that the duties of the respective executive directors of PUC and TCEQ and staffs, rather than the executive director of TCEQ and the staff, include:

(1) accumulation of evidence and other information from water and sewer utilities, from the agency and governing body, rather than TCEQ and the Texas Water Development Board (TWDB), and from other sources for the purposes specified by this chapter;

(2) preparation and presentation of evidence before the agency, rather than TCEQ;

(3) conducting investigations of water and sewer utilities under the jurisdiction of the agency, rather than TCEQ;

(4) preparation of recommendations that the agency, rather than TCEQ, undertake an investigation of any matter within its jurisdiction;

- (5) preparation of recommendations and a report for inclusion in the annual report of the agency, rather than TCEQ;
- (6) protection and representation of the public interest before the agency, rather than protection and representation of the public interest, together with the public interest advocate, before TCEQ; and
- (7) other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.

SECTION 2.04. Amends Section 13.014, Water Code, as follows:

Sec. 13.014. New heading: ATTORNEY GENERAL TO REPRESENT COMMISSION OR UTILITY COMMISSION. Requires the attorney general to represent TCEQ or PUC, rather than TCEQ, under this chapter in all matters before the state courts and any court of the United States.

SECTION 2.05. Amends Subchapter B, Chapter 13, Water Code, by adding Section 13.017, as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) Defines "counsellor" and "office" in this section.

(b) Provides that the Office of Public Utility Counsel (OPUC) represents the interests of residential and small commercial consumers under this chapter. Provides that OPUC:

- (1) is required to assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;
- (2) is required to advocate in OPUC's own name a position determined by the public utility counsel (counsellor) to be most advantageous to a substantial number of residential consumers;
- (3) is authorized to appear or intervene, as a party or otherwise, as a matter of right on behalf of:
 - (A) residential consumers, as a class, in any proceeding before PUC, including an alternative dispute resolution proceeding; and
 - (B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;
- (4) is authorized to initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:
 - (A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or
 - (B) in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;
- (5) is entitled to the same access as a party, other than PUC staff, to records gathered by PUC under Section 13.133 (Inspections; Examination Under Oath; Compelling Production of Records; Inquiry Into Management and Affairs);

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

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

(8) is authorized to recommend legislation to the legislature that OPUC determines would positively affect the interests of residential and small commercial consumers.

(c) Provides that this section does not limit the authority of PUC to represent residential or small commercial consumers.

(d) Provides that the appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. Prohibits the counsellor from being grouped with any other party.

SECTION 2.06. Amends Section 13.041, Water Code, as follows:

Sec. 13.041. New heading: GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION; RULES; HEARINGS. (a) Authorizes PUC, rather than TCEQ, to regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. Requires TCEQ to regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. Authorizes PUC and TCEQ, rather than TCEQ, to do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers and jurisdiction. Authorizes PUC to consult with TCEQ as necessary in carrying out its duties related to the regulation of water and sewer utilities. Makes nonsubstantive and conforming changes.

(b) Requires TCEQ and PUC to adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency, including rules governing practice and procedure before TCEQ and PUC, rather than requires TCEQ to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction, including rules governing practice and procedure before TCEQ.

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

(d) Makes a conforming change.

(e) Makes a conforming and a nonsubstantive change.

(f) Makes a conforming change.

(g) Provides that the regulatory assessment required by Section 5.701(n) (relating to a regulatory assessment from each retail customer), rather than Section 5.235(n) of this code, is not a rate and is not reviewable by PUC, rather than not reviewable by TCEQ, under Section 13.043 (Appellate Jurisdiction). Provides that TCEQ has the authority to enforce payment and collection of the regulatory assessment.

SECTION 2.07. Amends Section 13.042, Water Code, as follows:

Sec. 13.042. New heading: JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. Makes conforming changes.

SECTION 2.08. Amends Sections 13.043(a), (b), (c), (e), (f), (g), (h), and (j), Water Code, to make conforming and nonsubstantive changes.

SECTION 2.09. Amends Section 13.044(b), Water Code, to make conforming changes.

SECTION 2.10. Amends Section 13.046, Water Code, as follows:

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) Makes a conforming change.

(b) Requires that the process allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with PUC and TCEQ rules, rather than with TCEQ rules. Makes a conforming change.

(c) Requires PUC, rather than TCEQ, to provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with PUC and TCEQ rules, rather than with TCEQ rules, during which PUC or TCEQ, rather than with TCEQ, may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. Makes a conforming change.

SECTION 2.11. Amends Section 13.081, Water Code, to make a conforming change.

SECTION 2.12. Amends Section 13.082, Water Code, to make conforming changes.

SECTION 2.13. Amends Section 13.085, Water Code, as follows:

Sec. 13.085. New heading: ASSISTANCE BY UTILITY COMMISSION. Makes conforming changes.

SECTION 2.14. Amends Section 13.087(c), Water Code, to make a conforming change.

SECTION 2.15. Amends Sections 13.131(a), (b), (c), and (e), Water Code, to make conforming changes.

SECTION 2.16. Amends Section 13.132, Water Code, as follows:

Sec. 13.132. New heading: POWERS OF UTILITY COMMISSION. Makes conforming changes.

SECTION 2.17. Amends Section 13.133(b), Water Code, to authorize the regulatory authority to require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority, rather than TCEQ, so orders.

SECTION 2.18. Amends Sections 13.136(b) and (c), Water Code, to make conforming changes.

SECTION 2.19. Amends Section 13.137, Water Code, to make conforming changes.

SECTION 2.20. Amends Section 13.139(b), Water Code, to authorize the governing body of a municipality, as the regulatory authority for public utilities operating within its corporate limits, and PUC or TCEQ as the regulatory authority for public utilities operating outside the corporate

limits of any municipality, after reasonable notice and hearing on its own motion, to take certain actions.

SECTION 2.21. Amends Section 13.1395, Water Code, by adding Subsection (m), to require TCEQ to coordinate with PUC in the administration of this section.

SECTION 2.22. Amends Section 13.142(b), Water Code, to make a conforming change.

SECTION 2.23. Amends Section 13.144, Water Code, to require a district or authority created under Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III, or Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply to provide PUC and TCEQ with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract.

SECTION 2.24. Amends Section 13.147(a), Water Code, to make a conforming change.

SECTION 2.25. Amends Section 13.181(b), Water Code, to make conforming changes.

SECTION 2.26. Amends Sections 13.182(c) and (d), Water Code, to make conforming changes.

SECTION 2.27. Amends Section 13.183(d), Water Code, to make a conforming change.

SECTION 2.28. Amends Section 13.184(a), Water Code, to make conforming changes.

SECTION 2.29. Amends Sections 13.187(d), (k), and (o), Water Code, to make conforming and nonsubstantive changes.

SECTION 2.30. Amends Section 13.188(a), Water Code, to make conforming changes.

SECTION 2.31. Amends Sections 13.241(a) and (d), Water Code, as follows:

(a) Makes a conforming change.

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

SECTION 2.32. Amends Sections 13.242(a) and (c), Water Code, to make conforming and nonsubstantive changes.

SECTION 2.33. Amends Section 13.244, Water Code, to make conforming changes.

SECTION 2.34. Amends Sections 13.245(b), (c), and (e), Water Code, to make conforming changes.

SECTION 2.35. Amends Section 13.2451(c), Water Code, to make conforming changes.

SECTION 2.36. Amends Sections 13.246(a), (a-1), (b), (c), (d), (f), (h), and (i), Water Code, as follows:

(a) Makes conforming changes.

(a-1) Provides that notice under this subsection is not required for a matter filed with PUC or TCEQ under Section 13.248 or 13.255 (Single Certification in Incorporated or Annexed Areas), or Chapter 65 (Special Utility Districts). Makes conforming changes.

(b) Makes conforming changes.

(c) Requires that certificates of public convenience and necessity and amendments to certificates be granted by PUC on a nondiscriminatory basis after consideration by PUC of certain factors. Makes a conforming change.

(d), (f), (h), and (i) Makes conforming changes.

SECTION 2.37. Amends Section 13.247(a), Water Code, to make a conforming change.

SECTION 2.38. Amends Section 13.248, Water Code, to make a conforming change.

SECTION 2.39. Amends Sections 13.250(b), (c), and (e), Water Code, as follows:

(b) - (c) Makes conforming changes.

(e) Requires the utility, not later than the 48th hour after the hour in which a utility files a bankruptcy petition, to report this fact to PUC and TCEQ in writing.

SECTION 2.40. Amends Section 13.2502(d), Water Code, to make a conforming change.

SECTION 2.41. Amends Section 13.251, Water Code, to make conforming and nonsubstantive changes.

SECTION 2.42. Amends Section 13.252, Water Code, to make a conforming change.

SECTION 2.43. Amends Section 13.253, Water Code, as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) Authorizes PUC or TCEQ, after notice and hearing, to issue certain orders to certain public utilities or water supply or sewer service corporations. Makes conforming changes.

(b) Authorizes PUC, if PUC has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355 (Financial Assurance for Certain Systems), Health and Safety Code, or under this chapter, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a meeting of PUC, rather than at a TCEQ meeting, to immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by PUC not to exceed the amount of the bond or financial assurance. Authorizes the order requiring the improvements to be an emergency order if it is issued after the retail public utility has had an opportunity to be heard, rather than to be headed by the commissioner, at a meeting of PUC, rather than at a TCEQ meeting. Makes conforming changes.

SECTION 2.44. Amends Section 13.254, Water Code, as follows:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) Authorizes PUC, rather than TCEQ, at any time after notice and hearing, on its own motion or on receipt of a petition described by Subsection (a-1), to revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if PUC, rather than TCEQ, finds that:

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

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

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

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

(a-1)-(a-4) Makes conforming changes.

(b) Authorizes PUC, rather than the executive director of TCEQ, upon written request from the certificate holder, to cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c)-(g) and (g-1) Makes conforming changes.

SECTION 2.45. Amends Sections 13.255(a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Water Code, to make conforming and nonsubstantive changes.

SECTION 2.46. Amends Section 13.2551, Water Code, to make conforming changes.

SECTION 2.47. Amends Sections 13.257(e), (i), (r), and (s), Water Code, as follows:

(e) and (i) Makes conforming changes.

(r) Requires a utility service provider to:

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

(2) submit to the executive director of PUC, rather than the executive director of TCEQ, evidence of the recording.

Makes a conforming change.

(s) Makes a conforming change.

SECTION 2.48. Amends Sections 13.301(a), (b), (c), (d), (e), (f), and (g), Water Code, as follows:

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

(1) file a written application with PUC; and

(2) unless public notice is waived by the executive director of PUC, rather than the executive director of TCEQ, for good cause shown, give public notice of the action.

(b)-(d) Makes a conforming change.

(e) Requires the executive director of PUC, rather than the executive director of TCEQ, before the expiration of the 120-day notification period, to notify all known parties to the transaction and OPUC whether the executive director of the PUC will, rather than to the transaction of the executive director of TCEQ's decision whether to, request that PUC hold a public hearing to determine if the transaction will serve the public interest. Authorizes the executive director of PUC to request a hearing if:

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

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

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

(A) noncompliance with the requirements of PUC, TCEQ, or the Department of State Health Services, rather than TCEQ or the Texas Department of Health; or

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

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

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

Makes conforming changes.

(f) Authorizes the sale, acquisition, lease, or rental, unless the executive director of PUC, rather than the executive director of TCEQ, requests that a public hearing be held, to be completed as proposed:

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

(2) at any time after the executive director of PUC, rather than the executive director of TCEQ, notifies the utility or water supply or sewer service corporation that a hearing will not be requested.

(g) Makes a conforming change.

SECTION 2.49. Amends Section 13.302, Water Code, as follows:

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a)-(c) Makes conforming changes.

(d) Authorizes the executive director of PUC, rather than the executive director of TCEQ, to request that PUC hold a public hearing on the transaction if the executive director of PUC, rather than the executive director of TCEQ, believes that a criterion prescribed by Section 13.301(e) applies. Makes a conforming change.

(e) Authorizes the purchase or acquisition, unless the executive director of PUC, rather than the executive director of TCEQ, requests that a public hearing be held, to be completed as proposed:

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

(2) at any time after the executive director of PUC, rather than the executive director of TCEQ, notifies the person or utility that a hearing will not be requested.

(f) Makes conforming changes.

SECTION 2.50. Amends Section 13.303, Water Code, to make a conforming change.

SECTION 2.51. Amends Section 13.304, Water Code, as follows:

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

(b) Provides that a financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301 (Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction), but is required to provide written notice to PUC and TCEQ, rather than TCEQ, before the 30th day preceding the date on which the foreclosure is completed.

(c) Makes conforming changes.

SECTION 2.52. Amends Section 13.341, Water Code, to make conforming changes.

SECTION 2.53. Amends Section 13.342, Water Code, to make a conforming change.

SECTION 2.54. Amends Section 13.343(a), Water Code, as follows:

(a) Prohibits the owner of a utility that supplies retail water service from contracting to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by PUC or TCEQ rule, rather than by TCEQ rule; or

(2) the executive director of PUC, rather than the executive director of TCEQ, determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

SECTION 2.55. Amends Section 13.381, Water Code, as follows:

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Entitles any party to a proceeding before PUC or TCEQ, rather than before TCEQ, to judicial review under the substantial evidence rule.

SECTION 2.56. Amends Section 13.382(a), Water Code, to make conforming changes.

SECTION 2.57. Amends Section 13.411, Water Code, as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) Requires the attorney general on request of PUC or TCEQ, rather than of TCEQ, if PUC or TCEQ, rather than if TCEQ, has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of PUC or TCEQ, rather than of TCEQ, entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, in addition to any other remedies provided in this chapter, to bring an action in a court of competent jurisdiction in the name of and on behalf of PUC or TCEQ, rather than of TCEQ, against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) Requires the executive director of PUC or the executive director of TCEQ, if the executive director of PUC or the executive director of TCEQ has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, to immediately:

(1) notify the utility's representative; and

(2) initiate enforcement action consistent with this subchapter, and procedural rules adopted by PUC or TCEQ.

SECTION 2.58. Amends Section 13.4115, Water Code, as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. Authorizes PUC, in regard to a customer complaint arising out of a charge made by a public utility, if PUC, rather than the executive director of TCEQ, finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by PUC, to issue an order requiring the utility to make the adjustment. Makes conforming changes.

SECTION 2.59. Amends Sections 13.412(a), (f), and (g), Water Code, as follows:

(a) Requires the attorney general, at the request of PUC or TCEQ, to bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

(1) has abandoned operation of its facilities;

(2) informs PUC or TCEQ that the owner is abandoning the system;

(3) violates a final order of PUC or TCEQ; or

(4) allows any property owned or controlled by it to be used in violation of a final order of PUC or TCEQ.

(f) Provides that for purposes of this section and Section 13.4132 (Operation of Utility that Discontinues Operation or is Referred for Appointment of Receiver), abandonment may include but is not limited to:

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

- (2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;
- (3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;
- (4) failure to provide customers adequate notice of a health hazard or potential health hazard;
- (5) failure to secure an alternative available water supply during an outage;
- (6) displaying a pattern of hostility toward or repeatedly failing to respond to PUC or TCEQ or the utility's customers; and
- (7) failure to provide PUC or TCEQ with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Authorizes a receiver under this section, notwithstanding Section 64.021 (Qualifications; Residence Requirement), Civil Practice and Remedies Code, to seek approval from PUC and TCEQ, rather than TCEQ approval, to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity.

SECTION 2.60. Amends Section 13.413, Water Code, to provide that the costs incurred in the operation of the receivership include payment of fees to the receiver for his services, payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership, and 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 PUC or TCEQ.

SECTION 2.61. Amends Section 13.4131, Water Code, as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) Authorizes PUC, after providing to the utility notice and an opportunity for a hearing, to place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter, rather than TCEQ rules, or noncompliance with an order issued under this chapter, rather than TCEQ rules. Makes a conforming change.

(b) Makes conforming changes.

(c) Authorizes PUC, while supervising a utility, to require that the utility obtain approval from PUC, rather than TCEQ approval, before taking any action that may be restricted under Subsection (b), rather than of this section. Makes a conforming change.

SECTION 2.62. Amends Sections 13.4133(a) and (c), Water Code, as follows:

(a) Makes conforming and nonsubstantive changes.

(c) Requires PUC to require the utility to provide notice of the hearing to each customer and to OPUC. Makes conforming changes.

SECTION 2.63. Amends Sections 13.414(a) and (c), Water Code, as follows:

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

(c) Requires the attorney general to institute suit on his own initiative or at the request of, in the name of, and on behalf of PUC or TCEQ in a court of competent jurisdiction to recover the penalty under this section.

SECTION 2.64. Amends Sections 13.4151(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (m), Water Code, as follows:

(a) Authorizes PUC or TCEQ, as applicable, if a person, affiliated interest, or entity subject to the jurisdiction of PUC or TCEQ violates this chapter or a rule or order adopted under this chapter, to assess a penalty against that person, affiliated interest, or entity as provided by this section.

(b) Requires PUC or TCEQ, in determining the amount of the penalty, to consider:

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

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

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

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

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

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

(3) any other matters that justice requires.

(c) Authorizes the executive director of PUC or the executive director of TCEQ, if, after examination of a possible violation and the facts surrounding that possible violation, the executive director of PUC or the executive director of TCEQ concludes that a violation has occurred, to issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. Requires the executive director of PUC or the executive director of TCEQ to base the recommended amount of the proposed penalty on the factors provided by Subsection (b), and to analyze each factor for the benefit of the agency, rather than of TCEQ.

(d) Requires the executive director of PUC or the executive director of TCEQ, not later than the 10th day after the date on which the report is issued, to give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation.

(e) Authorizes the person, affiliated interest, or retail public utility charged, not later than the 20th day after the date on which notice is received, to give the agency, rather than TCEQ, written consent to the report described by Subsection (d), rather than the executive director of TCEQ's report, including the recommended penalty, or may make a written request for a hearing.

(f) Requires PUC or TCEQ, if the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (d), rather than recommended by the executive director of TCEQ, or fails to timely respond to the notice, to by order assess that penalty or order a hearing to be

held on the findings and recommendations in the report, rather than the executive director of TCEQ's report. Makes a conforming change.

(g) Makes conforming and nonsubstantive changes.

(h) Requires PUC or TCEQ to give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the agency, rather than TCEQ finds that a violation has occurred and has assessed a penalty, the agency, rather than TCEQ, is required to give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's order, rather than TCEQ's order. Requires the agency, rather than TCEQ, if the agency, rather than TCEQ, is required to give notice of a penalty under this subsection or Subsection (f), to file notice of the agency's decision in the Texas Register not later than the 10th day after the date on which the decision is adopted. Makes conforming and nonsubstantive changes.

(i) Makes conforming changes.

(j) Provides that failure to forward the money to or to post the bond with the agency, rather than TCEQ, within the time provided by Subsection (i) constitutes a waiver of all legal rights to judicial review. Authorizes the agency or the executive director of the agency, rather than TCEQ or the executive director of TCEQ, if the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i), to forward the matter to the attorney general for enforcement. Makes conforming and nonsubstantive changes.

(k) Makes a conforming change.

(m) Makes a conforming change.

SECTION 2.65. Amends Section 13.417, Water Code, to authorize PUC or TCEQ, if any person or retail public utility fails to comply with any lawful order of PUC or TCEQ or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he is authorized to be lawfully interrogated, to apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 2.66. Amends Section 13.418, Water Code, as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Requires that fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings be deposited in the general revenue fund, rather than be paid to TCEQ and deposited in the general revenue fund.

(b) Requires that fines and penalties collected from a public utility under this chapter in other than criminal proceedings be deposited in the water utility improvement account as provided by Section 341.0485 (Water Utility Improvement Account), Health and Safety Code, rather than be paid to TCEQ and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 2.67. Amends Section 13.501(7), Water Code, to make a conforming change.

SECTION 2.68. Amends Section 13.502(e), Water Code, as follows:

(e) Prohibits an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium from changing from submetered billing to allocated billing unless:

(1) the executive director of PUC, rather than the executive director of TCEQ, approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by PUC.

SECTION 2.69. Amends Sections 13.503(a), (b), and (e), Water Code, to make conforming and nonsubstantive changes.

SECTION 2.70. Amends Section 13.5031, Water Code, to make a conforming change.

SECTION 2.71. Amends Section 13.505, Water Code, to make a conforming and a nonsubstantive change.

SECTION 2.72. Amends Section 13.512, Water Code, to make a conforming change.

SECTION 2.73. Amends Section 13.513, Water Code, to make a conforming change.

SECTION 2.74. Amends Section 5.013(a), Water Code, to delete existing text providing that TCEQ has general jurisdiction over administration of the state's water rate program under Chapter 13 (Water Rates and Services) of this code.

SECTION 2.75. (a) Provides that on June 1, 2012, the following are transferred from TCEQ to PUC:

(1) the powers, duties, functions, programs, and activities of TCEQ relating to the economic regulation of water and sewer utilities, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapter 13, Water Code, as provided by this article;

(2) any obligations and contracts of TCEQ that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of TCEQ that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) Requires TCEQ and PUC to enter into a memorandum of understanding that:

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

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of TCEQ that are used for purposes of TCEQ's powers and duties directly related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article; and

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article, from TCEQ to PUC.

(c) Provides that the memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) Authorizes the executive directors of TCEQ and PUC to agree in the memorandum of understanding under this section to transfer to PUC any personnel of TCEQ whose

functions predominantly involve powers, duties, obligations, functions, and activities related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) Requires TCEQ and PUC to appoint a transition team to accomplish the purposes of this section. Requires the transition team to establish guidelines on how the two agencies will cooperate regarding:

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

(f) Provides that a rule, form, policy, procedure, or decision of TCEQ related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of PUC and remains in effect until amended or replaced by that agency.

(g) Requires that the memorandum required by this section be completed by April 1, 2012.

(h) Requires PUC and TCEQ to adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

SECTION 2.76. (a) Requires PUC to conduct a comparative analysis of the ratemaking authority of PUC before the effective date of this Act and the ratemaking authority of PUC after the transition described in Section 2.75 of this article, to identify potential for procedural standardization. Requires PUC to issue a report of the analysis, with recommendations regarding rate standardization, for consideration by the 83rd Legislature.

(b) Requires PUC to prepare a report describing staffing changes related to the transition described in Section 2.75 of this article, including reductions in staff that PUC may realize as a result of consolidated functions. Requires PUC to submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2014-2015 biennium.

SECTION 2.77. (a) Provides that on June 1, 2012, the following are transferred from the Office of Public Interest Counsel of TCEQ (OPIC) to OPUC:

- (1) the powers, duties, functions, programs, and activities of OPIC relating to the representation of the public interest in matters related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article;
- (2) any obligations and contracts of OPIC that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and
- (3) all property and records in the custody of OPIC that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) Requires OPIC and OPUC to enter into a memorandum of understanding that:

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

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of TCEQ that are used for purposes of the OPIC's powers and duties directly related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(c) Provides that the memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) Authorizes OPIC and OPUC to agree in the memorandum of understanding under this section to transfer to OPUC any personnel of OPIC whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) Requires OPIC and OPUC to appoint a transition team to accomplish the purposes of this section.

(f) Provides that a rule, form, policy, procedure, or decision of OPIC related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of OPUC and remains in effect until amended or replaced by that agency.

(g) Requires that the memorandum required by this section be completed by April 1, 2012.

(h) Requires OPUC and OPIC to adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY COMMISSION OF TEXAS

SECTION 3.01. Amends Section 11.002, Water Code, by adding Subdivision (21) to define "utility commission."

SECTION 3.02. Amends Section 11.041, Water Code, as follows:

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Makes conforming and nonsubstantive changes.

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

(c) Requires PUC, if, after preliminary investigation, the executive director of PUC determines that probable grounds exist for the complaint, to enter an order setting a time and place for a hearing on the petition.

(d) Makes conforming changes.

(e) Makes a conforming change.

(f) Authorizes TCEQ to participate in the hearing for the purpose of presenting evidence on the availability of the water requested by the petitioner. Makes conforming changes.

(g) Requires the executive director of PUC, if, after the preliminary investigation, the executive director of PUC determines that no probable grounds exist for the complaint, to dismiss the complaint. Makes a conforming change.

SECTION 3.03. Amends Section 12.013, Water Code, as follows:

Sec. 12.013. RATE-FIXING POWER. (a) Makes a conforming change.

(b) Makes nonsubstantive changes.

(c)-(f) Makes conforming changes. Deletes existing Subsection (g) providing that no action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section. Deletes existing Subsection (h) providing that nothing herein contained shall affect the jurisdiction of PUC.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date: September 1, 2011.