

BILL ANALYSIS

Senate Research Center

H.B. 1600
By: Cook et al. (Nichols)
Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Public Utility Commission of Texas (PUC) was established in 1975 to oversee the operations of electric, water, and telecommunications utilities. In 1986, the legislature transferred responsibility for water utility regulation to the Texas Water Commission, now the Texas Commission on Environmental Quality (TCEQ).

PUC last underwent a complete Sunset review in 2010, but the 82nd Legislature did not enact the Sunset bill during the 2011 session. Instead, the legislature enacted S.B. 652, which continued the agency for two years and charged the Sunset Advisory Commission with conducting a special purpose review of PUC. The Sunset Advisory Commission has since reexamined its recommendations from 2010 in light of actions taken by PUC in response to the initial Sunset findings and other legislation enacted in 2011.

PUC authorization will expire on September 1, 2013, unless it is continued. H.B. 1600 continues PUC until September 1, 2023.

The bill will:

- allow PUC to issue emergency cease-and-desist orders;
- require PUC to provide additional oversight of the Electric Reliability Council of Texas (ERCOT) and its system administration fee;
- transfer regulation of water and wastewater rates from TCEQ to PUC and require PUC to examine and compare the rate-setting processes to those used in the electric and telecommunications industries;
- move public interest advocacy for water utility rate matters from TCEQ's Office of Public Interest Counsel to the Office of Public Utility Counsel (OPUC);
- require PUC to establish a mechanism for the renewal of certificates for the competitive local exchange carriers;
- prohibit a former PUC commissioner from serving on the ERCOT board for two years after leaving office; and
- eliminate certain statutorily required reports.

H.B. 1600 amends current law relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, and to the functions of the Office of Public Utility Counsel and authorizes a fee.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas (PUC) in SECTION 1.06 (Sections 15.102 and 15.104, Utilities Code), SECTION 1.08 (Section 39.107, Utilities Code), SECTION 1.09 (Section 39.151, Utilities Code), SECTION 1.13 (Section 52.1035, Utilities Code), SECTION 1.15, SECTION 1.16, and SECTION 2.13 (Section 13.041, Water Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality (TCEQ) is modified in SECTION 2.13 (Section 13.041, Water Code) of this bill.

Rulemaking authority previously granted to PUC is rescinded in SECTION 1.14 (Section 64.003, Utilities Code) of this bill.

Rulemaking authority previously granted to the executive director of TCEQ is transferred to PUC in SECTION 2.53 (Section 13.254, Water Code) of this bill.

Rulemaking authority previously granted to TCEQ is transferred to PUC in SECTION 2.17 (Section 13.046, Water Code), SECTION 2.22 (Section 13.131, Water Code), SECTION 2.26 (Section 13.136, Water Code), SECTION 2.27 (Section 13.137, Water Code), SECTION 2.30 (Section 13.1396, Water Code), SECTION 2.31 (Section 13.142, Water Code), SECTION 2.34 (Section 13.181, Water Code), SECTION 2.35 (Section 13.182, Water Code), SECTION 2.37 (Section 13.184, Water Code), SECTION 2.38 (Section 13.187, Water Code), SECTION 2.39 (Section 13.188, Water Code), SECTION 2.40 (Section 13.241, Water Code), SECTION 2.41 (Section 13.242, Water Code), SECTION 2.53 (Sections 13.254, Water Code), SECTION 2.54 (Section 13.255, Water Code), SECTION 2.60 (Section 13.304, Water Code), SECTION 2.79 (Sections 13.503, Water Code), and SECTION 2.80 (Section 13.5031, Water Code), of this bill.

Rulemaking authority is expressly granted to PUC and TCEQ in SECTION 2.94 of this bill.

Rulemaking authority is expressly granted to the Office of Public Utility Counsel and the office of public interest counsel of TCEQ in SECTION 2.96 of this bill.

SECTION BY SECTION ANALYSIS

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

SECTION 1.01. Amends Section 12.005, Utilities Code, to provide that unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code (Texas Sunset Act), or by Chapter 39 (Restructuring of Electric Utility Industry), the Public Utility Commission of Texas (PUC) is abolished and this title expires September 1, 2023, rather than September 1, 2013.

SECTION 1.02. Amends Section 12.053, Utilities Code, as follows:

Sec. 12.053. MEMBERSHIP QUALIFICATIONS. (a) Requires a commissioner of PUC (commissioner), to be eligible for appointment, to:

- (1)-(2) Makes nonsubstantive changes;
- (3) be a competent and experienced administrator;
- (4) be well informed and qualified in the field of public utilities and utility regulation; and
- (5) have at least five years of experience in the administration of business or government or as a practicing attorney or certified public accountant.

Deletes existing text requiring a commissioner, to be eligible for appointment, to meet certain provisions, including be a representative of the general public. Makes nonsubstantive changes.

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

- (1) at any time during the two years preceding appointment:

(A) personally served as an officer, director, owner, employee, partner, or legal representative of a public utility regulated by PUC or of an affiliate or direct competitor of a public utility regulated by PUC; or

(B) owned or controlled, directly or indirectly, more than a 10 percent interest, rather than owned or controlled, directly or indirectly stocks or bonds of any class with a value of \$10,000 or more, in a public utility regulated by PUC or in an affiliate or direct competitor of a public utility regulated by PUC; or

(2) Makes no change to this subdivision.

SECTION 1.03. Amends Section 12.152(a), Utilities Code, as follows:

(a) Provides that a person is not eligible for appointment as a commissioner or executive director of PUC if:

(1) Makes no change to this subdivision;

(2) the person or the person's spouse:

(A) Makes no change to this paragraph;

(B) directly or indirectly owns or controls more than a 10 percent interest in, rather than directly or indirectly owns or controls more than 10 percent interest or a pecuniary interest with a value exceeding \$10,000 in, certain regulated or affected entities; or

(C)-(D) Makes no change to these paragraphs.

SECTION 1.04. Amends Section 12.154(a), Utilities Code, as follows:

(a) Prohibits a commissioner or PUC employee, during the period of service with PUC, from:

(1) Makes no change to this subdivision; or

(2) Redesignates existing Subdivision (3) as Subdivision (2). Makes no further change to this subdivision.

Deletes text of existing Subdivision (2) prohibiting a commissioner or PUC employee, during the period of service with PUC, from directly or indirectly owning or controlling securities in a public utility, affiliate, or direct competitor of a public utility.

SECTION 1.05. Amends Section 12.155, Utilities Code, by adding Subsection (d), as follows:

(d) Prohibits a 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 1.06. 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 (Enforcement and Penalties) 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:

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

(B) is hazardous;

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

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

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

(c) Prohibits PUC from issuing a cease and desist order to a retail customer under Subsection (a)(2)(A).

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 the order, if PUC issues an order under this subchapter without a hearing, to request a hearing to affirm, modify, or set aside the order. Requires a request to 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 the order, 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, 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 to hold the hearing.

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

SECTION 1.07. Amends Subchapter A, Chapter 32, Utilities Code, by adding Section 32.005, as follows:

Sec. 32.005. STUDY ON CERTAIN BORDER ISSUES. Requires PUC to conduct a study to determine effective means to promote wholesale sale of electric energy generated in this state for delivery into Mexico. Requires PUC, not later than December 1, 2014, to issue to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and the house of representatives that have primary jurisdiction over electric utilities and border issues a written report describing means to promote and encourage such sales. Requires PUC, in conducting the study, to consider ways in which transmission lines may be routed or constructed in a manner least intrusive to recognized historical sites or ranches located less than 150 miles from the international border. Requires that the report include any recommendations PUC considers prudent for legislation to allow or support the identified means. Provides that this section expires September 1, 2015.

SECTION 1.08. Amends Section 39.107, Utilities Code, is amended by adding Subsection (k), as follows:

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

SECTION 1.09. Amends Section 39.151, Utilities Code, by amending Subsections (d-1) and (e) and adding Subsections (d-2), (d-3), (d-4), and (e-1), as follows:

(d-1) Requires PUC to require an independent organization certified by PUC under this section to submit to PUC the organization's entire proposed annual budget. Requires PUC to review the proposed budgets either annually or biennially and authorizes PUC to approve, disapprove, or modify any item including in a 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 the organization, except as otherwise agreed to by PUC and 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 the organization's performance as part of the budget review process under Subsection (d-1). Requires PUC to prepare a report at the time PUC approves the organization's budget detailing the organization's performance and submit the report to the lieutenant governor, the speaker of the house of representatives, and each house and senate standing committee that has jurisdiction over electric utility issues.

(d-4) Creates this subsection from existing text. Makes no further change to this subsection.

(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, rather than 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. 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 to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate, or to evaluate the effectiveness or efficiency of the organization. Requires PUC to work with the organization to establish the detail of information, both current and historical, and the time frames PUC needs to effectively evaluate the fee, rather than to effectively evaluate a rate or a rate request. Requires PUC to require the organization to closely match actual revenues generated by the fee and other sources of revenue with revenue necessary to fund the budget, taking into account the effect of a fee change on market participants and consumers, to ensure that the budget year does not end with surplus or insufficient funds. Requires PUC to require the organization to submit to PUC, on a schedule determined by PUC, reports that compare actual expenditures with budget expenditures.

(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.

SECTION 1.10. Amends Section 39.1515(c), Utilities Code, to require the independent organization to use money from the fee, rather than from the rate, authorized by Section 39.151(e) to pay for the market monitor's activities.

SECTION 1.11. Amends Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.159 to read as follows:

Sec. 39.159. COST-BENEFIT ANALYSIS OF SIGNIFICANT MARKET CHANGE.

(a) Provides that in this section, "significant market change" means a change to the electric market that is reasonably expected to add more than \$100 million to annual energy costs to customers in this state.

(b) Requires PUC to conduct a cost-benefit analysis of a proposed significant market change before authorizing the significant market change. Requires that the cost-benefit analysis, to the extent possible:

(1) quantify the degree to which the proposed significant market change will result in an increase in wholesale electricity prices, residential electricity prices, and electricity prices for commercial and industrial customers;

(2) analyze potential adverse effects of the proposed significant market change on retail electric providers; and

(3) compare the potential benefits of the proposed significant market change to the potential economic costs of the proposed change.

(c) Requires PUC to make the cost-benefit analysis available to the public and appropriate state agencies not less than 30 days before the date PUC authorizes the significant market change.

SECTION 1.12. Amends Section 39.903(d), Utilities Code, to delete existing text requiring PUC to report to the electric utility restructuring legislative oversight committee if the system benefit fund fee is insufficient to fund the purposes set forth in Subsection (e) to the extent required by this section.

SECTION 1.13. Amends Subchapter C, Chapter 52, Utilities Code, by adding Section 52.1035, as follows:

Sec. 52.1035. RENEWAL OF CERTAIN CERTIFICATES. (a) Requires PUC by rule to require each 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 certain information.

(b) Requires that the rules:

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

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

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

SECTION 1.14. Repealer: Section 64.003 (Customer Awareness), Utilities Code.

SECTION 1.15. Requires PUC to adopt rules necessary to implement Section 39.107(k), Utilities Code, as added by this article, as soon as practicable after the effective date of this Act.

SECTION 1.16. 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 the rules to specify whether PUC will require that a holder of a certificate of operating authority or holder of a service provider certificate of operating authority file the information required by Section 52.1035, Utilities Code, as added by this article, once or on a regular basis. Requires each certificate 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, 2015. Requires that the rules, if PUC requires regular filings, specify the timing of the subsequent filings.

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

SECTION 2.01. Amends Section 5.013(a), Water Code, to delete existing text providing that the Texas Commission on Environmental Quality (TCEQ) has general jurisdiction over the administration of the state's water rate program under Chapter 13 (Water Rates and Services) of this code, and to make nonsubstantive changes.

SECTION 2.02. Amends Section 5.311(a), Water Code, to authorize TCEQ to delegate to an administrative law judge of the State Office of Administrative Hearings (SOAH) the responsibility to hear any matter before TCEQ, rather than to authorize TCEQ to delegate to an administrative law judge of SOAH the responsibility to hear any matter before TCEQ and to issue interlocutory orders related to interim rates under Chapter 13.

SECTION 2.03. Amends Section 5.507, Water Code, to authorize TCEQ or PUC to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 13.4132 (Operation of Utility that Discontinues Operation or Is Referred for Appointment of Receiver).

SECTION 2.04. Amends Sections 5.508(a) and (c), Water Code, as follows:

(a) Authorizes PUC, rather than TCEQ, notwithstanding the requirements of Section 13.187, to authorize an emergency increase for a utility for which a person has been appointed under Section 5.507 (Emergency Order for Operation of Utility that Discontinues Operation or Is Referred for Appointment of Receiver) or 13.4132 or for which a receiver has been appointed under Section 13.412 (Receivership), rather than for which a person has been appointed under Section 5.507 or 13.412 or for which a receiver has been appointed under Section 13.4132, if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(c) Authorizes PUC, rather than TCEQ, to schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. Provides that the additional revenues collected under an emergency rate increase are subject to refund if PUC, rather than if TCEQ, finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 2.05. Amends Section 11.002, Water Code to add Subdivision (21), to define "utility commission."

SECTION 2.06. Amends Section 11.041, Water Code, as follows:

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Authorizes any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply to present to PUC, rather than the Texas Natural Resource Conservation Commission (TNRCC), a written petition showing certain information. Makes nonsubstantive changes.

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

(d) Authorizes PUC to require the complainant to make an additional deposit in an amount fixed by PUC conditioned on all payment of all costs of the proceeding, rather than authorizes TNRCC to require the complainant to make an additional deposit or execute a bond satisfactory to TNRCC in an amount fixed by TNRCC conditioned on the payment of all costs of the proceeding.

(e) Requires PUC, rather than TNRCC, at least 20 days before the date set for the hearing, to transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) Requires PUC, rather than TNRCC, to hold a hearing on the complaint at the time and place stated in the order. Authorizes TNRCC to participate in the hearing for the purpose of presenting evidence on the availability of the water requested by the petitioner. Requires PUC, on completion of the hearing, to render a written decision. Makes a conforming change.

(g) Requires the executive director of PUC, rather than the executive director of TNRCC, to dismiss the complaint if, after the preliminary investigation, the executive director of PUC determines that no probable grounds exist for the complaint. Authorizes PUC, rather than TNRCC, to either return the deposit or pay it into the State Treasury. Makes a conforming change.

SECTION 2.07. Amends Section 12.013, Water Code, as follows:

Sec. 12.013. RATE-FIXING POWER. (a) Requires PUC to fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 (Water Rights) or Chapter 12 (Provisions Generally Applicable to Water Rights) of this code.

(b) Makes nonsubstantive changes.

(c)-(f) Changes references to TNRCC to PUC.

Deletes existing Subsection (g) requiring that no action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission be affected by the enactment of this section.

Deletes existing Subsection (h) requiring that nothing herein contained affect the jurisdiction of PUC.

SECTION 2.08. Amends Section 13.002, Water Code, by amending Subdivisions (2) and (18) to redefine, "affiliated interest" or "affiliate" and "regulatory authority" and adding Subdivision (22-a) to define "utility commission."

SECTION 2.09. 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 PUC, notwithstanding any other law, 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, rather than provides that TCEQ, notwithstanding any other law, has the same jurisdiction over a water supply or sewer service corporation that TCEQ has under this chapter over a water and sewer utility if TCEQ finds that the water supply or sewer service corporation is failing to comply with certain requirements.

(b) Provides that PUC's jurisdiction, rather than TCEQ's jurisdiction, provided by this section ends if the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65 (Special Utility Districts).

SECTION 2.10. 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) Requires 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 and staffs, rather than 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 in this chapter;
- (2) preparation and presentation of evidence before the agency, rather than TCEQ, or its appointed examiner in proceedings;
- (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 of representation of the public interest, together with the public interest advocate, before TCEQ; and
- (7) Makes no change to this subdivision.

Makes nonsubstantive changes.

SECTION 2.11. Amends Section 13.014, Water Code, as follows:

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

SECTION 2.12. 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 represents the interests of residential and small commercial consumers under this chapter. Provides that the office:

- (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 the office's own name a position determined by the public utilities 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 the utility commission, including an alternative dispute resolution proceeding; and
 - (B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers

are in need of representation, including an alternative dispute resolution proceeding;

(4) 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 the utility commission;

(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 the utility commission; and

(8) is authorized to recommend legislation to the legislature that the office 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 2.13 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 to regulate and supervise the business of each, rather than every, water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. Authorizes TCEQ to regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. Authorizes PUC and 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 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. Makes nonsubstantive changes.

(c) Authorizes TCEQ and PUC 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.

(c-1) Authorizes PUC, in addition to the powers and duties of SOAH under Title 2 (Public Utility Regulatory Act), Utilities Code, to delegate to an administrative law judge of SOAH the responsibility and authority to issue interlocutory orders related to interim rates under this chapter.

(d) Authorizes PUC, rather than TCEQ, to issue emergency orders, with or without a hearing in certain situations.

(e) Authorizes PUC to establish reasonable compensation for the temporary service required under Subsection (d)(2) (relating to the authorization of TCEQ to issue emergency order to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service), rather than under Subsection (d)(2) of this section.

(f) Requires that the order fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before PUC, rather than TCEQ, if an order is issued under Subsection (d) without a hearing.

(g) Provides that the regulatory assessment required by Section 5.701(n) (relating to the collection and use of certain fees) is not a rate and is not reviewable by PUC under Section 13.043 (Appellate Jurisdiction), rather than provides the regulatory assessment required by Section 5.235(n) (Redesignated as V.T.C.A., Water Code § 5.701 by Acts 2001, 77th Legislature, Chapter 965, § 3.02, eff. September 1, 2001) of this code is not a rate and is not reviewable by TCEQ under Section 13.043 of this code.

SECTION 2.14. Amends Section 13.042, Water Code, as follows:

Sec. 13.042. New heading: JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Makes no change to this subsection.

(b) Authorizes the governing body of a municipality by ordinance to elect to have PUC, rather than TCEQ, exercise exclusive original jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

(c) Authorizes the governing body of a municipality that surrenders its jurisdiction to PUC to reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to PUC, except that the municipality is prohibited from reinstating its jurisdiction during the pendency of a rate proceeding before PUC, rather than authorizing the governing body of a municipality that surrenders its jurisdiction to TCEQ to reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to TCEQ, except that the municipality is prohibited from reinstating its jurisdiction during the pendency of a rate proceeding before TCEQ.

(d) Requires PUC, rather than TCEQ, to have exclusive appellate jurisdiction to review orders to ordinances of those municipalities as provided in this chapter.

(e) Requires PUC, rather than TCEQ, to have exclusive original jurisdiction over water and sewer utility rates, operations and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

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

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

(a) Authorizes any party to a rate proceeding before the governing body of a municipality to appeal the decision of the governing body to PUC, rather than to TCEQ. Requires an appeal under this subsection to be initiated within 90 days after the date of notice of the final decision by the governing body by filing a petition for review with PUC, rather than TCEQ, and by serving copies on all parties to the original rate proceeding. Requires PUC, rather than TCEQ, to hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. Authorizes PUC, rather than TCEQ, to establish the effective date for PUC's rates, rather than TCEQ's rates, at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. Authorizes PUC, rather than TCEQ, to consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Authorizes ratepayers of the following entities to appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to PUC, rather than to TCEQ:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67 (Nonprofit Water Supply or Sewer Service Corporations);

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

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

(4) a district or authority created under Article III, Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), or Article XVI, Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), of the Texas Constitution that provides water or sewer service to household users; and

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

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

(e) Requires PUC, in an appeal under Subsection (b), to hear the appeal de novo. Makes conforming changes.

(f) Authorizes a retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, to appeal to PUC, rather than appeal to TCEQ, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service.

(g) Authorizes an applicant for service from an affected county or a water supply or sewer service corporation to appeal to PUC, rather than TCEQ, a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. Requires in an appeal brought under this subsection PUC, rather than TCEQ, in addition to the factors specified under Subsection (j), to determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. Provides that a determination made by PUC, rather than by TCEQ, on an appeal under this subsection is binding on all similarly situated applicants for service, and prohibits PUC, rather than TCEQ, from considering other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) Authorizes PUC, on a motion by the executive director of PUC or by the appellant under Subsection (a), (b), or (f), to establish interim rates to be in effect until a final decision is made, rather than authorizes TCEQ, on a motion by the executive director of TCEQ or by the appellant under Subsection (a), (b), or (f) of this section, to establish interim rates to be in effect until a final decision is made.

(j) Requires PUC, rather than TCEQ, in an appeal under this section, to ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly are required to be just and reasonable. Requires PUC, rather than TCEQ, to use a methodology that preserves the financial integrity of the retail public utility. Requires for agreements between municipalities PUC, rather than TCEQ, to consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

SECTION 2.16. Amends Section 13.044(b), Water Code, as follows:

(b) Authorizes a district, notwithstanding the provisions of any resolution, ordinance, or agreement, to appeal the rates imposed by the municipality by filing a petition with PUC, rather than with TCEQ. Requires PUC, rather than TCEQ, to hear the appeal de novo and the municipality is required to have the burden of proof to establish that the rates are just and reasonable. Requires PUC, rather than TCEQ, to fix the rates to be charged by the municipality and the municipality is prohibited from increasing such rates without the approval of PUC, rather than without the approval of TCEQ.

SECTION 2.17. Amends Section 13.046, Water Code, as follows:

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) Requires PUC, rather than TCEQ, by rule to establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

(b) Requires that the rules provide a streamlined process that the retail public utility that takes over the nonfunctioning system is authorized to use to apply to PUC, rather than TCEQ, is charged under Subsection (a). Requires the process to

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.

(c) Requires PUC 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 rules during which PUC is prohibited from imposing a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system, rather than requiring 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 TCEQ rules during which TCEQ is prohibited from imposing a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. Requires PUC, rather than TCEQ, to consult with the utility before determining the period and authorizes PUC, rather than TCEQ, to grant an extension of the period for good cause.

SECTION 2.18. Amends Section 13.081, Water Code, to prohibit this chapter to be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but authorizes no provision of any franchise agreement to limit or interfere with any power conferred on PUC, rather than any power conferred on TCEQ, by this chapter.

SECTION 2.19. Amends Section 13.082, Water Code, as follows:

Sec. 13.082. LOCAL UTILITY SERVICES; EXEMPT AND NONEXEMPT AREAS.

(a) Requires municipalities, notwithstanding any other provision of this section, to continue to regulate each kind of local utility service inside their boundaries until PUC, rather than until TCEQ, has assumed jurisdiction over the respective utility pursuant to this chapter.

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

(c) Authorizes PUC, rather than TCEQ, notwithstanding any election, to consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas.

(d) Requires that those reports and tariffs be filed with the governing body of the municipality as well as with PUC, rather than with TCEQ.

(e) Provides that this section does not limit the duty and power of PUC, rather than the duty and power of TCEQ, to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 2.20. Amends Section 13.085, Water Code, as follows:

Sec. 13.085. New heading: ASSISTANCE BY UTILITY COMMISSION. Authorizes PUC, rather than TCEQ, to advise and assist municipalities and affected counties in

connection with questions and proceedings arising under this chapter on request. Authorizes this assistance to include aid to municipalities or an affected country in connection with matters pending before PUC, rather than matters pending before TCEQ, the courts the governing body of any municipality or the commissioners court of an affected county, including making members of the staff available to them as witnesses and otherwise providing evidence.

SECTION 2.21. Amends Section 13.087(c), Water Code, to provide that PUC, rather than TCEQ, has jurisdiction to enforce this section, notwithstanding any other provision of this chapter.

SECTION 2.22. Amends Sections 13.131(a), (b), (c), and (e), Water Code, as follows:

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

(b) Authorizes compliance with the system of accounts prescribed for the particular class of utilities by that agency, in the case of a utility subject to regulation by a federal regulatory agency, to be considered a sufficient compliance with the system prescribed by PUC, rather than be considered a sufficient compliance with the system prescribed by TCEQ. Authorizes PUC, rather than TCEQ, to prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. Prohibits the system of accounts and the forms of books, accounts, records, and memoranda prescribed by PUC, rather than prescribed by TCEQ, for a utility or class of utilities from conflicting or being inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) Requires PUC, rather than TCEQ, to fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules PUC prescribes, rather than any other rules TCEQ prescribes.

(e) Provides that every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by PUC, rather than TCEQ, and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda.

SECTION 2.23. Amends Section 13.132, Water Code, as follows:

Sec. 13.132. New heading: **POWERS OF UTILITY COMMISSION.** (a) Authorizes PUC, rather than TCEQ, to require certain forms and reports.

(b) Authorizes PUC, rather than TCEQ, on the request of the governing body of any municipality, to provide sufficient staff members to advise and consult with the municipality on any pending matter.

SECTION 2.24. Amends Section 13.1325, Water Code, as follows:

Sec. 13.1325. **ELECTRONIC COPIES OF RATE INFORMATION.** Requires PUC, on request, to provide, at reasonable cost, electronic copies of all information provided to PUC under Sections 13.016 (Record of Proceedings; Right to Hearing), 13.043, and 13.187 (Statement of Intent to Change Rates; Hearing; Determination of Rate Level) to the extent that the information is available and is not confidential, rather than requires on

request, the state agency with jurisdiction over rates charged by water and sewer utilities to provide, at reasonable cost, electronic copies of all information provided to the agency under Sections 13.016, 13.043, and 13.187 to the extent that the information is available and is not confidential. Requires that copies of all information provided to PUC, rather than the agency, be provided to the Office of Public Utility Counsel (OPUC), on request, at no cost to the office.

SECTION 2.25. 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 if TCEQ, so orders.

SECTION 2.26. Amends Sections 13.136(b) and (c), Water Code, as follows:

(b) Require each utility annually to file a service and financial report in a form and at times specified by PUC rule, rather than by TCEQ rule.

(c) Requires every water supply or sewer service corporation to file with PUC, rather than file with TCEQ, tariffs showing all rates that are subject to the appellate jurisdiction of PUC, rather than the appellate jurisdiction of TCEQ, and that are in force at the time for any utility service, product, or commodity offered.

SECTION 2.27. Amends Section 13.137, Water Code, as follows:

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

(1) Makes no change to this subdivision; and

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

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

(c) Prohibits books, accounts, records, or memoranda required by the regulatory authority to be kept in the state from being removed from the state, except on conditions prescribed by PUC, rather than on conditions prescribed by TCEQ.

SECTION 2.28. 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 relating to rules, regulations, and standards..

SECTION 2.29. Amends Section 13.1395, Water Code, by adding Subsection (m), to require TCEQ to coordinate with PUC in the administration of this section.

SECTION 2.30. Amends Sections 13.1396(b), (c), and (f), Water Code, as follows:

(b) Makes a conforming change.

(c) Requires each affected utility to submit to PUC, each electric utility that provides transmission and distribution service to the affected utility, each retail electric provider

that sells electric power to the affected utility, the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by PUC, and the division of emergency management of the governor, certain information. Makes nonsubstantive changes.

(f) Makes a conforming change.

SECTION 2.31. Amends Section 13.142(b), Water Code, to require PUC, rather than TCEQ, to adopt rules concerning payment of utility bills that are consistent with Chapter 2251 (Payment for Goods and Services), Government Code.

SECTION 2.32. Amends Section 13.144, Water Code, to require a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply 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 2.33. Amends Section 13.147(a), Water Code, to authorize the sewer service provider, if the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, to petition PUC, rather than to petition TCEQ, to issue an order requiring the water service provider to provide that service.

SECTION 2.34. Amends Section 13.181(b), Water Code, as follows:

(b) Provides that PUC, rather than TCEQ, has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter, subject to this chapter. Authorizes PUC, rather than TCEQ, to adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 2.35. Amends Sections 13.182(c) and (d), Water Code, as follows:

(c) Authorizes PUC, for ratemaking purposes, to treat two or more municipalities served by a utility as a single class wherever PUC considers that treatment to be appropriate, rather than authorizes TCEQ, for ratemaking purposes, to treat two or more municipalities served by a utility as a single class wherever TCEQ considers that treatment to be appropriate.

(d) Requires PUC, rather than TCEQ, by rule to establish a preference that rates under a consolidated tariff be consolidated by region.

SECTION 2.36. Amends Section 13.183(d), Water Code, to prohibit a regulatory authority other than PUC, rather than TCEQ, from approving an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

SECTION 2.37. Amends Section 13.184(a), Water Code, as follows:

(a) Prohibits PUC, unless PUC establishes alternate rate methodologies in accordance with Section 13.183(c) (relating to the authorization of the regulatory authority to adopt specific alternative ratemaking methodologies for water or sewer rates), from prescribing any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public, rather than prohibiting TCEQ, unless TCEQ establishes alternate rate methodologies in accordance with Section 13.183(c), from prescribing any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. Authorizes the governing body of a municipality

exercising its original jurisdiction over rates and services to use alternate ratemaking methodologies established by ordinance or by PUC rule, rather than by TCEQ rule, in accordance with Section 13.183(c). Prohibits the municipal regulatory authority, from proscribing any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public, unless it uses alternate ratemaking methodologies established by ordinance or by PUC rule, rather than TCEQ rule, in accordance with Section 13.183(c).

SECTION 2.38. Amends Sections 13.187(d), (k), and (o), Water Code, as follows:

(d) Authorizes PUC, rather than TCEQ, to suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before PUC, rather than TCEQ, or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n), rather than authorizing TCEQ to suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before TCEQ or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) of this code.

(k) Prohibits the proposed rate, except as provided by Subsection (d-1) (relating to the authorization of a regulatory authority to suspend the effective date of a rate change for not more than 90 days), from suspending for longer than:

- (1) 90 days by a local regulatory authority; or
- (2) 150 days by PUC, rather than 150 days by TCEQ.

(o) Requires the regulatory authority, if a regulatory authority other than PUC, rather than a regulatory authority other than TCEQ, establishes interim rates or an escrow account, to make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

SECTION 2.39. Amends Sections 13.188(a) and (b), Water Code, as follows:

(a) Requires PUC by rule, notwithstanding any other provision of this chapter, to adopt a procedure allowing a utility to file with PUC an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause, rather than require TCEQ by rule, notwithstanding any other provision of this chapter, to adopt a procedure allowing a utility to file with TCEQ an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause. Requires PUC, rather than TCEQ, by rule, to require the pass through of documented decreases in energy costs within a reasonable time. Requires the pass through, whether a decrease or increase, to be implemented on no later than an annual basis, unless PUC determines a special circumstances applies, rather than unless TCEQ determines a special circumstance applies.

(b) Requires PUC, rather than the executive director of TCEQ, to hold an uncontested public meeting:

- (1) Makes no change to this subdivision; or
- (2) if PUC, rather than the executive director of TCEQ, determines that there is substantial public interest in the matter.

SECTION 2.40. Amends Sections 13.241(a), (d), and (e), Water Code, as follows:

(a) Requires PUC, rather than TCEQ, in determining whether to grant or amend a certificate of public convenience and necessity, to ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(d) Requires the applicant, before PUC grants a new certificate of convenience, rather than before TCEQ 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, rather than demonstrate to TCEQ, that regionalization or consolidation with another retail public utility is not economically feasible.

(e) Requires PUC by rule, rather than TCEQ by rule, to develop a standardized method for determining under Section 13.246(f) which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area is more capable financially, managerially, and technically of providing continuous and adequate service.

SECTION 2.41. Amends Sections 13.242(a) and (c), Water Code, as follows:

(a) Prohibits a utility, a utility operated by an affected county, or a water supply or sewer service corporation, unless otherwise specified, from in any way rendering retail water or sewer utility service directly or indirectly to the public without first having obtained from PUC, rather than from TCEQ, a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility is prohibited from furnishing, making available, rendering, or extending retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(c) Authorizes PUC, rather than TCEQ, to by rule allow a municipality or utility or water supply corporation to render retail water service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 (Single Certification in Incorporated or Annexed Areas) that it intends to provide retail water service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility. Makes nonsubstantive changes.

SECTION 2.42. Amends Section 13.244, Water Code, as follows:

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

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

(c) Requires each applicant for a certificate or for an amendment to file with PUC evidence required by PUC to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority, rather than file with TCEQ evidence required by TCEQ to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) Requires an application for a certificate of public convenience and necessity or for an amendment to a certificate to contain certain information, including any item required by PUC, rather than required by TCEQ.

SECTION 2.43. Amends Sections 13.245(b), (c), (c-1), (c-2), (c-3), and (e), Water Code, as follows:

(b) Prohibits PUC, rather than TCEQ, except as provided by Subsections (c), (c-1), and (c-2), from granting to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality.

(c) Requires PUC, rather than TCEQ, if a municipality has not consented under Subsection (b) before the 180th day after the date the municipality receives the retail public utility's application, to grant the certificate of public convenience and necessity without the consent of the municipality if PUC, rather than TCEQ, finds that the municipality did not maintain certain requirements of service.

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

(1) the PUC, rather than TCEQ, makes the findings required by Subsection (c);

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

(3) Makes no change to this subdivision.

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

(c-3) Requires PUC, rather than TCEQ, to include as a condition of a certificate of public convenience and necessity granted under Subsection (c-1) or (c-2) that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(e) Provides that if PUC, rather than TCEQ, makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

SECTION 2.44. Amends Sections 13.2451(b) and (c), Water Code, as follows:

(b) Prohibits PUC, rather than TCEQ, from extending a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if an owner of

land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). Provides that this subsection does not apply to a transfer of a certificate as approved by PUC, rather than to a transfer of a certificate as approved by TCEQ.

(c) Authorizes PUC, rather than TCEQ, after notice to the municipality and an opportunity for a hearing, to decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. Provides that this subsection does not apply to a certificate of public convenience and necessity for an area that was transferred to a municipality on approval of PUC, rather than on approval of TCEQ and in relation to which the municipality has spent public funds.

SECTION 2.45. Amends Section 13.246, Water Code, as follows:

Sec. 13.246. NOTICE AND HEARINGS; ISSUANCE OR REFUSAL; FACTORS CONSIDERED. (a) Requires PUC, rather than TCEQ, to cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified if an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed. Requires PUC, rather than TCEQ, if requested to fix a time and place for a hearing and give notice of the hearing.

(a-1) Requires PUC, rather than TCEQ, except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), to require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Requires that notice required under this be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time PUC, rather than TCEQ, received the application for the certificate or amendment. Provides notice under this subsection is not required for a matter filed with PUC or TCEQ under certain sections and chapters.

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

(c) Requires that certificates of public convenience and necessity and amendments to certificates be granted by PUC on a nondiscriminatory basis after consideration by PUC, rather than after consideration by TCEQ, of certain considerations.

(d) Authorizes PUC, rather than TCEQ, to require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by PUC, rather than in a form or amount specified by TCEQ, to ensure that continuous and adequate utility service is provided.

(e) Requires, where applicable, in addition to the other factors in this section PUC, rather than TCEQ, to consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant; and to enforce the rules adopted under Section 16.343 (Minimum State Standards and Model Political Subdivision Rules).

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

(g) Makes no change to this subsection.

(h) Authorizes a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area, except as provided by Subsection (i), to elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to PUC, rather than to elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to TCEQ, before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. Provides that the landowner's election is effective without a further hearing or other process by PUC, rather than providing that the landowner's election is effective without further hearing or other process by TCEQ. Prohibits an applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection from being required to provide service to the removed land for any reason, including the violation of law or PUC or TCEQ rules, rather than by TCEQ rules, by the water or sewer system of another person.

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

SECTION 2.46. Amends Section 13.247(a), Water Code, to prohibit a municipally owned or operated utility, except as provided by Section 13.255, from providing retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from PUC, rather than without first having obtained from TCEQ, a certificate of public convenience and necessity that includes the areas to be served.

SECTION 2.47. Amends Section 13.248, Water Code, to provide that contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by PUC, rather than when approved by TCEQ, after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 2.48. Amends Sections 13.250(b), (c), and (e), Water Code, as follows:

(b) Prohibits the holder of a certificate or a person who possesses facilities used to provide utility service, unless PUC, rather than TCEQ, issues a certificate that neither the present nor future convenience and necessity will be adversely affected, from discontinuing, reducing, or impairing service to a certified service area or part of a certified service area except for:

(1) Makes no change to this subdivision;

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

(3)-(4) Makes no change to these subdivisions.

(c) Requires any discontinuance, reduction, or impairment of service, whether with or without approval of PUC, to be in conformity with and subject to conditions, restrictions, and limitations that PUC prescribes, rather than requires any discontinuance, reduction, or impairment of service, whether with or without approval of TCEQ, to be in conformity with and subject to conditions, restrictions, and limitations that TCEQ prescribes.

(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 2.49. Amends Section 13.2502(d), Water Code, to provide that this section does not limit or extend the jurisdiction of PUC under Section 13.043(g), rather than providing that this section does not limit or extend the jurisdiction of TCEQ under Section 13.043(g).

SECTION 2.50. Amends Section 13.251, Water Code, as follows:

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. Prohibits a utility or a water supply or sewer service corporation, except as provided by Section 13.255, from selling, assigning, or leasing a certificate of public convenience and necessity or any right obtained under a certificate unless the PUC, rather than TCEQ, has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c). Requires the sale, assignment, or lease to be on the conditions prescribed by PUC, rather than TCEQ. Makes nonsubstantive and conforming changes.

SECTION 2.51. Amends Section 13.252, Water Code, to authorize PUC, rather than TCEQ, to issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service if a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity.

SECTION 2.52. Amends Section 13.253, Water Code, as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) Authorizing after notice and hearing, PUC or TCEQ, rather than TCEQ, to:

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

(A) Makes no change to this paragraph; and

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to PUC, rather than practices that are acceptable to TCEQ, to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a

utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by PUC, rather than in a form and amount specified by TCEQ; or

(2)-(4) Makes no change to these subdivisions.

(b) Authorizes PUC, after providing to the retail public utility notice and an opportunity to be heard by PUC at a meeting of PUC, rather than by TCEQ at a meeting of TCEQ, 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 if PUC, rather than TCEQ, 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. 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 at a meeting of PUC, rather than heard by the commissioners of TCEQ at a TCEQ meeting. Authorizes PUC, after notice and hearing, to require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SECTION 2.53. Amends Sections 13.254(a), (a-1), (a-2), (a-3), (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Water Code, as follows:

(a) Authorizes PUC, rather than TCEQ, at any time after notice and hearing to revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if PUC finds certain prohibitive factors or actions taken by the certificate holder. Makes nonsubstantive changes.

(a-1) Authorizes the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service, as an alternative to decertification under Subsection (a), to petition PUC, rather than petition TCEQ, under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. Requires the petitioner, on the day the petitioner submits the petition to PUC, rather than to TCEQ, to send, via certified mail, a copy of the petition to the certificate holder, who is authorized to submit information to PUC, rather than to submit the information to TCEQ, to controvert information submitted by the petitioner. Requires the petitioner to demonstrate that certain requirements are upheld, including:

(1)-(2) Makes no change to these subdivisions;

(3) the certificate holder conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by PUC, rather than as determined by TCEQ; and

(4) Makes no change to this subdivision.

(a-2) Provides that a landowner is not entitled to make the election described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by PUC, rather than described by TCEQ, if the landowner's property is located in certain areas.

(a-3) Requires PUC to grant the petition unless PUC makes an express finding that the petitioner makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its findings with separate findings and

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

(a-4) Provides that the decision of PUC on the petition is final after any reconsideration authorized by PUC's rules and prohibits it from being appealed, rather than providing that the decision of TCEQ on the petition is final after any reconsideration authorized by TCEQ's rules and prohibits it from being appealed.

(a-6) Requires PUC, rather than TCEQ, to grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. Prohibits PUC, rather than TCEQ, from denying a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. Authorizes PUC, rather than TCEQ, to require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

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

(b) Authorizes PUC, rather than the executive director of TCEQ, 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) upon written request from the certificate holder.

(c) Authorizes PUC, rather than TCEQ, to require one or more retail public utilities with their consent to provide service in the area in question if the certificate of any retail public utility is revoked or amended. Requires the order of PUC, rather than the order of TCEQ, to not be effective to transfer property.

(d) Prohibits a retail public utility from in any way rendering retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that PUC, rather than TCEQ, determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) Requires PUC to ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies PUC of its intent to provide service to the decertified area, rather than requires TCEQ to ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies TCEQ of its intent to provide service to the decertified area.

(f) Requires that the determination of compensation by the independent appraiser be binding on PUC, rather than binding on TCEQ.

(g) Requires PUC to adopt rules governing the evaluation of these factors, rather than requiring TCEQ to adopt rules governing the evaluation of these factors.

(g-1) Requires each retail public utility to engage its own appraiser at its own expense, and each appraisal is required to be submitted to PUC, rather than submitted to TCEQ, within 60 calendar days if the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies PUC, rather than notifies TCEQ, of its intent to provide service to the decertified area. Requires PUC, rather than TCEQ, to appoint a third appraiser who is required to make a determination of the compensation within 30 days after receiving the appraisals.

(h) Prohibits a certificate holder that has land removed from its certificated service area in accordance with this section to be required, after the land is removed, to provide to the removed land for any reason, including the violation of law or PUC or TCEQ rules, rather than TCEQ rules, by a water or sewer system of another person.

SECTION 2.54. Amends Sections 13.255(a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Water Code, as follows:

(a) Requires the executed agreement to be filed with PUC, rather than filed with TCEQ, and requires PUC, rather than TCEQ, on receipt of the agreement, to incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

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

(c) Requires PUC, rather than TCEQ, to grant single certification to the municipality. Requires PUC, rather than TCEQ, to also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. Requires PUC, rather than TCEQ, to determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification if the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility. Prohibits the order of PUC, rather than TCEQ, from being effective to transfer property. Authorizes a transfer of property to only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e). Requires the grant of single certification by PUC, rather than TCEQ, to go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f). Makes nonsubstantive changes.

(d) Authorizes the municipality, in the event the final order of PUC, rather than in the event the final order of TCEQ, is not appealed within 30 days, to request the district court of Travis County to enter a judgment consistent with the order of PUC, rather than consistent with the order of TCEQ. Requires the court, in such an event, to render a judgment that transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by PUC's final order and property determined by PUC to be rendered useless or valueless by the granting of single certification, rather than as delineated by TCEQ's

final order and property determined by TCEQ to be rendered useless or valueless by the granting of single certification; and orders payment to the retail public utility of adequate and just compensation for the property as determined by PUC in its final order, rather than as determined by TCEQ in its final order.

(e) Authorizes any party that is aggrieved by a final order of PUC, rather than any party that is aggrieved by final order of TCEQ, to file an appeal with the district court of Travis County within 30 days after the order becomes final. Requires the court, after the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, to enter a judgment that transfers certain utilities or utility titles or orders certain payments to the retail public utility. Makes nonsubstantive changes.

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

(k) Provides that certain conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2), including that PUC, rather than TCEQ, or court is required to determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility; and if the municipality abandons its application, the court or PUC, rather than the court or TCEQ, is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees.

(l) Authorizes the retail public utility or municipality, if the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, to petition PUC or a person PUC designates, rather than to petition TCEQ or a person TCEQ designates, for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. Provides that the determination of compensation under this subsection is binding on PUC, rather than is binding on TCEQ.

(m) Requires PUC, rather than TCEQ, to deny an application for single certification by a municipality that fails to demonstrate compliance with TCEQ's minimum requirements for public drinking water.

SECTION 2.55. Amends Section 13.2551, Water Code, as follows:

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) Authorizes PUC, rather than TCEQ, as a condition to decertification or single certification under Section 13.254 (Revocation or Amendment of Certificate) or 13.255, and on request by an affected retail public utility, to order certain retail public utilities to service an area and to transfer entire certificates of public convenience and necessity.

(b) Requires PUC, rather than TCEQ, to order service to the entire area under Subsection (a) if PUC, rather than TCEQ, finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) Requires PUC, rather than TCEQ, to require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and is required establish the terms under which the service must be provided.

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

(e) Prohibits PUC, rather than TCEQ, from ordering compensation to the decertificated retail utility if service to the entire service area is ordered under this section.

SECTION 2.56. Amends Sections 13.257(e), (i), (r), and (s), Water Code, as follows:

(e) Provides that a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) or (n) or liable for any other damages to any person, notwithstanding any provision of this section to the contrary, for certain failures or mistakes including:

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

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

(B) PUC, rather than TCEQ, did not maintain an accurate map of the certificated service area of the utility service provider as required by this chapter; or

(2) Makes no change to this subdivision.

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

(r) Requires a utility service provider to record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the PUC's records, rather than TCEQ's records, and a boundary description of the service area by certain surveys, systems, landmarks, and records; and submit to the executive director of PUC, rather than the executive director of TCEQ, evidence of the recording.

(s) Requires that the recording required by this section be completed not later than the 31st day after the date a utility service provider receives a final order from PUC, rather than a final order from TCEQ, granting an application for a new certificate or for an

amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 2.57. 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 file a written application with PUC, rather than a written application with TCEQ; and 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) Authorizes PUC, rather than TCEQ, to require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) Authorizes PUC, rather than TCEQ, to require that the person provide a bond or other financial assurance in a form and amount specified by PUC, rather than a form and amount specified by TCEQ, to ensure continuous and adequate utility service is provided.

(d) Requires PUC, rather than TCEQ, to, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest if the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability.

(e) Requires the executive director of PUC, before the expiration of the 120-day notification period, to notify all parties to the transaction and OPUC whether the executive director of PUC will request that PUC hold a public hearing to determine if the transaction will serve the public interest, rather than requiring the executive director of TCEQ, before the expiration of the 120-day notification period, to notify all parties to the transaction of the executive director of TCEQ's decision whether to request that TCEQ hold a public hearing to determine if the transaction will serve the public interest. Authorizes the executive director of PUC, rather than the executive director of TCEQ, to request a hearing if certain concerns or a lack of demonstrating required capabilities is shown, including:

(1) the application filed with PUC, rather than TCEQ, or the public notice was improper;

(2) Makes no change to this subdivision;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of with the requirements of PUC, TCEQ, or the Department of State Health Services, rather than TCEQ or the Texas Department of Health; or continuing mismanagement or misuse of revenues as a utility service provider; and

(4) Makes no change to this subdivision;

Makes nonsubstantive 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 at the end of the 120-day period; or 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) Prohibits the sale, acquisition, lease, or rental from being completed unless PUC, rather than TCEQ, determines that the proposed transaction serves the public interest if a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice.

SECTION 2.58. Amends Section 13.302, Water Code, as follows:

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) Prohibits a utility from purchasing voting stock in another utility doing business in this state and a person is prohibited from acquiring a controlling interest in a utility doing business in this state unless the person or utility files a written application with PUC, rather than unless the person or utility files a written application with TCEQ, not later than the 61st day before the date on which the transaction is to occur.

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

(c) Authorizes PUC, rather than TCEQ, if the person acquiring a controlling interest cannot demonstrate adequate financial capability, to require that the person provide a bond or other financial assurance in a form and amount specified by PUC, rather than an amount in a form and amount specified by TCEQ, to ensure continuous and adequate utility service is provided.

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

(e) Authorizes the purchase or acquisition, unless the executive director of PUC, rather than the executive director of TCEQ, to be completed as proposed at the end of the 60-day period or 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) Prohibits the purchase or acquisition, if a hearing is requested or if the person or utility fails to make an application to PUC as required, rather than if a hearing is requested or if the person or utility fails to make an application to TCEQ as required, from being completed unless PUC, rather than TCEQ, determines that the proposed transaction serves the public interest.

SECTION 2.59. Amends Section 13.303, Water Code, to prohibit a utility from loaning 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 PUC, rather than to TCEQ, within 60 days after the date of the transaction.

SECTION 2.60. 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 notify 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 provide notice to TCEQ, before the 30th day preceding the date on which the foreclosure is completed.

(c) Authorizes the financial institution to operate the utility for an interim period prescribed by PUC rule, rather than by TCEQ rule, before transferring or otherwise obtaining a certificate of convenience and necessity. Provides that a financial institution that operates a utility during an interim period under this subsection is subject to each PUC rule, rather than is subject to each TCEQ rule, to which the utility was subject and in the same manner.

SECTION 2.61. Amends Section 13.341, Water Code, to provide that PUC, rather than TCEQ, has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of PUC, rather than under the jurisdiction of TCEQ, to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

SECTION 2.62. Amends Section 13.342, Water Code, to authorize PUC, rather than TCEQ, to 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.

SECTION 2.63. Amends Section 13.343(a), Water Code, to prohibit 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 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 as defined by TCEQ rule; or 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 2.64. Amends Section 13.381, Water Code, to provide that any party to a proceeding before PUC or TCEQ, rather than before TCEQ, is entitled to judicial review under the substantial evidence rule.

SECTION 2.65. Amends Section 13.382(a), Water Code, to provide that any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by PUC are excessive and who is a prevailing party in proceedings for review of a PUC order or decision is authorized in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before PUC and the court, rather than providing that any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by TCEQ are excessive and who is a prevailing party in proceedings for review of a TCEQ order or decision is authorized in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before TCEQ and the court.

SECTION 2.66. 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, 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 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 if PUC or 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 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, rather than requiring the attorney general on request of TCEQ, 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 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 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 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.

(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, rather than requiring the executive director of TCEQ, if 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 notify the utility's representative; and initiate enforcement action consistent with this subchapter; and procedural rules adopted by PUC or TCEQ, rather than procedural rules adopted by TCEQ.

SECTION 2.67. Amends Section 13.4115, Water Code, as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. Authorizes PUC, rather than TCEQ, in regard to a customer complaint arising out of a charge made by a public utility, to issue an order requiring the utility to make the adjustment if PUC 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, rather than if 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 TCEQ. Provides that failure to comply with the order within 30 days of receiving the order is a violation for which PUC, rather than TCEQ, is authorized to impose an administrative penalty under Section 13.4151 (Administrative Penalty).

SECTION 2.68. 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 for a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the 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, abandonment may include but is not limited to certain failures including:

- (1)-(5) Makes no changes to these subdivisions;
- (6) displaying a pattern of hostility toward or repeatedly failing to respond to PUC or TCEQ, rather than failing to respond to TCEQ, or the utility's customers; and
- (7) failure to provide PUC or TCEQ, rather than provide TCEQ, with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Authorizes a receiver appointed 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, to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity.

SECTION 2.69. Amends Section 13.413, Water Code, to provide that the costs include certain payments, including 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 2.70. Amends Section 13.4131, Water Code, as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) Authorizes PUC, rather than TCEQ, 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, or noncompliance with an order issued under this chapter, rather than gross or continuing noncompliance with this chapter or TCEQ rules, or noncompliance with TCEQ orders.

(b) Authorizes PUC, rather than TCEQ, while supervising a utility, to require the utility to abide by conditions and requirements prescribed by PUC, rather than TCEQ, including certain requirements and restrictions, including a requirement that the utility place the utility's funds into an account in a financial institution approved by PUC, rather than approved by TCEQ, and use of those funds is required to be restricted to reasonable and necessary utility expenses.

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

SECTION 2.71. Amends Sections 13.4132(a), (b), and (d), Water Code, as follows:

(a) Authorizes PUC or TCEQ, after providing to the utility notice and an opportunity to be heard by the commissioners at a PUC or TCEQ meeting, to authorize a willing person to temporarily manage and operate a utility if the utility has meets certain criteria.

(b) Authorizes PUC or TCEQ to appoint a person under this section by emergency order, and notice of the action is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters.

(d) Provides that this section does not affect the authority of PUC or TCEQ to pursue an enforcement claim against a utility or an affiliated interest.

SECTION 2.72. Amends Sections 13.4133(a) and (c), Water Code, as follows:

(a) Authorizes PUC, rather than TCEQ, notwithstanding the requirements of Section 13.187, to authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 or for which a receiver has been appointed under Section 13.412 if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers. Makes nonsubstantive changes.

(c) Requires PUC, rather than TCEQ, to schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. Requires PUC, rather than TCEQ, to require the utility to provide notice of the hearing to each customer and to OPUC. Provides that the additional revenues collected under an emergency rate increase are subject to refund if PUC, rather than TCEQ, finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 2.73. 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 2.74. 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, to assess a penalty against that person, affiliated interest, or entity as provided by this section 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.

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

(c) Authorizes the executive director of PUC or the executive director of TCEQ concludes that a violation has occurred, 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, 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 is required to analyze each factor for the benefit of the agency, rather than of TCEQ. Makes nonsubstantive changes.

(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 written consent to the report described by Subsection (c), rather than give TCEQ written consent to 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 by order, if the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c), rather than recommended by the executive director of TCEQ, or fails to timely respond to the notice, to assess that penalty or order a hearing to be held on the findings and recommendations in the report, rather than in the executive director of TCEQ's report. Requires PUC or TCEQ, if PUC or TCEQ assess the penalty recommended by the report, to give written notice to the person, affiliated interest, or retail public utility charged of its decision.

(g) Requires the agency, rather than TCEQ, to call a hearing and give notice of the hearing if the person, affiliated interest, or retail public utility charged requests or PUC or TCEQ orders a hearing. Authorizes the agency by order, rather than TCEQ by order, to find that a violation has occurred and may assess a civil penalty, to find that a violation has occurred but that no penalty should be assessed, or to find that no violation has occurred, as a result of the hearing. Requires the agency, rather than TCEQ, in making any penalty decision, to analyze each of the factors provided by Subsection (b). Makes 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 finds that a violation has occurred and has assessed a penalty, the agency 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 requiring TCEQ to give notice of its decision to the person, affiliated interest, or retail public utility charged, and if TCEQ finds that a violation has occurred and has assessed a penalty, 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 TCEQ's order. Requires the agency to file notice of the agency's decision, rather than requiring TCEQ to file notice of TCEQ's decision, in the Texas Register not later than the 10th day after the date on which the decision is adopted, if the agency, rather than TCEQ, is required to give notice of a penalty under this subsection or Subsection (f).

(i) Requires the person, affiliated interest, or retail public utility charged with the penalty, within the 30-day period immediately following the day on which the agency's order is final, rather than TCEQ's order is final, as provided by Subchapter F (Contested Cases: Final Decisions and Orders; Motions for Rehearing), Chapter 2001, Government Code, to pay the penalty in full or if the person, affiliated interest, or retail public utility seeks judicial review of the fact of the violation, the amount of the penalty or both:

(A) forward the amount of the penalty to the agency, rather than to TCEQ, for placement in an escrow account; or

(B) post with the agency, rather than post with the TCEQ, a supersedeas bond in a form approved by the agency, rather than approved by TCEQ, for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) Provides that failure to forward the money to or to post the bond with the agency, rather than with 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, to forward the matter to the attorney general for enforcement if the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond by Subsection (i). Makes nonsubstantive changes.

(k) Requires that judicial review of the order or decision of the agency assessing the penalty, rather than of TCEQ, be under the substantial evidence rule and may be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(m) Authorizes the agency, rather than TCEQ, notwithstanding any other provision of law, to compromise, modify, extend the time for payment of, or remit with or without condition, any penalty imposed under this section.

SECTION 2.75. Amends Section 13.417, Water Code, to authorize PUC or TCEQ, rather than TCEQ, to apply to any court of competent jurisdiction to compel obedience by proceedings for contempt if any person or retail public utility fails to comply with any lawful order of PUC or TCEQ, rather than fails to comply with any lawful order of TCEQ, 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.

SECTION 2.76. Amends Section 13.418, Water Code, as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Requires certain fines and penalties collected under this chapter to be deposited in the general revenue fund, rather than to be paid to TCEQ.

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

SECTION 2.77. Amends Section 13.401(7), Water Code, to redefine "multiple use facility."

SECTION 2.78. Amends Section 13.502(e), Water Code, to prohibit 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 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 property owner meets rental agreement requirements established by PUC, rather than rental agreements established by TCEQ.

SECTION 2.79. Amends Sections 13.503(a), (b), and (e), Water Code, as follows:

(a) Requires PUC, rather than TCEQ, to encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Requires PUC, rather than TCEQ, to adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. Provides that all submetering equipment is subject to the rules and standards established by PUC, rather than established by TCEQ, for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 (Examination And Test Of Equipment). Makes nonsubstantive changes.

(e) Authorizes PUC, rather than TCEQ, to may authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

SECTION 2.80. Amends Section 13.5031, Water Code, to require PUC, rather than TCEQ, to adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs, notwithstanding any other law.

SECTION 2.81. Amends Section 13.505, Water Code, as follows:

Sec. 13.505. ENFORCEMENT. Authorizes a tenant, in addition to the enforcement provisions contained in Subchapter K (Violations and Enforcement), to recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager, if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of PUC, rather than the violates a rule of TCEQ, regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs,. Makes nonsubstantive changes.

SECTION 2.82. Amends Section 13.512, Water Code, to require each eligible city to file a copy of its privatization contract with PUC, rather than with TCEQ, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

SECTION 2.83. Amends Section 13.513, Water Code, as follows:

Sec. 13.513. New heading: ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. Makes conforming and nonsubstantive changes.

SECTION 2.84. Amends Section 49.352(c), Water Code, to authorize a municipality, for purposes of this section, to obtain single certification in the manner provided by Section 13.255, except that the municipality is authorized to file an application with PUC, rather than TNRCC, to grant single certification immediately after the municipality provides notice of intent to provide service as required by Section 13.255(b).

SECTION 2.85. Amends Section 552.047(e), Local Government Code, to authorize users residing within the established service area, but outside the municipality's boundaries, to appeal rates established for drainage charges under Section 13.043(b), Water Code, rather than authorizing users residing within the established service area, but outside the municipality's boundaries, to appeal rates established for drainage charges to TNRCC as authorized by Section 13.043(b) of the Water Code.

SECTION 2.86. Amends Section 7201.004(b), Special District Local Laws Code, to provide that this section does not apply to rules or regulations concerning potable water quality standards; or conflicts relating to service areas or certificates issued to the corporation or district by PUC or TCEQ.

SECTION 2.87. Amends Section 7201.005(c), Special District Local Laws Code, to authorize that district boundaries be modified in accordance with Chapter 13 and 49, Water Code, except that the boundaries are required to include all territory in any area included under a certificate of convenience and necessity issued by PUC or TCEQ to the district.

SECTION 2.88. Amends Section 7201.102, Special District Local Laws Code, to require the district at all times operate and construct necessary improvements within the certificated areas established by PUC or TCEQ, rather than established by TCEQ, to provide uninterrupted, continuous, and adequate service to existing and future customers for water, sewer, and contract services.

SECTION 2.89. Amends Section 8363.106(b), Special District Local Laws Code, to require PUC, rather than TCEQ, to grant single certification as to the city as provided by Section 13.255(c), Water Code, in the event that the district applies for the certification on the city's behalf in the manner provided by Section 13.255(b), Water Code.

SECTION 2.90. Amends Section 8363.251(a), Special District Local Laws Code, as follows:

(a) Authorizes the city to dissolve the district by ordinance after provision is made for all debts incurred by the district if one or more of the following does not occur:

(1)-(2) Makes no change to these subdivisions;

(3) on or before the last day of the third year after the effective date of the Act enacting this chapter, PUC rather than TCEQ, issues an order approving the sale and transfer of a certificate of public convenience and necessity authorizing the city to provide retail water service to territory in the district; and

(4) Makes no change to this subdivision.

SECTION 2.91. Amends Section 8801.201, Special District Local Laws Code, as follows:

Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) Authorizes a person who is required to convert to surface water under this chapter and who purchases that water supply wholesale from a political subdivision as defined by Section 12.013(b), Water Code, to appeal to PUC, rather than appeal to TCEQ, the rates the political subdivision charges to the person.

(b) Requires PUC, rather than TCEQ, to hear the appeal not later than the 180th day after the date the appeal is filed.

(c) Requires PUC, rather than TCEQ, to issue a final decision on the appeal not later than the 60th day after the date the hearing ends.

SECTION 2.92. Amends Section 8803.151(1), Special District Local Laws Code, to redefine "commission."

SECTION 2.93. Amends Section 8808.151(1), Special District Local Laws Code, to redefine "commission."

SECTION 2.94 (a) Provides that on September 1, 2014, 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 service, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapters 11, 12, and 13, Water Code, as provided by this Act;

(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 the commission's powers and duties directly related to the economic regulation of water and sewer service under Chapters 11, 12, and 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 service under Chapters 11, 12, and 13, Water Code, as amended by this article, from TCEQ to PUC.

(c) Provides that the memorandum of understanding under this section is not required to be adopted by rule under Section 5.104 (Memoranda of Understanding), 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 economic regulation of water and sewer service under Chapters 11, 12, and 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 PUC.

(g) Requires the memorandum required by this section to be completed by August 1, 2014.

(h) Requires PUC and TCEQ to adopt rules to implement the changes in law made by this Act to Chapter 13, Water Code, not later than February 1, 2015.

SECTION 2.95. (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 2.94 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 84th Legislature.

(b) Requires PUC to prepare a report describing staffing changes related to the transition described in Section 2.94 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 2016-2017 biennium.

SECTION 2.96. (a) Provides that the following are transferred from the office of public interest counsel of TCEQ to OPUC:

- (1) the powers, duties, functions, programs, and activities of the office of public interest counsel of TCEQ relating to the representation of the public interest in matters related to the economic regulation of water and sewer service under Chapters 11, 12, and 13, Water Code, as amended by this article;
- (2) any obligations and contracts of the office of public interest counsel of the 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 the office of public interest counsel 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 the office of public interest counsel of TCEQ 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 office of public interest counsel's powers and duties directly related to the representation of the public interest in matters relating to the economic regulation of water and sewer service under Chapters 11, 12, and 13, Water Code, as amended by this article.

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

(d) Authorizes the office of public interest counsel of TCEQ and OPUC to agree in the memorandum of understanding under this section to transfer to OPUC any personnel of the office of public interest counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters relating to the economic regulation of water and sewer service under Chapters 11, 12, and 13, Water Code, as amended by this article.

(e) Requires the office of public interest counsel of TCEQ 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 the office of public interest counsel 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 OPUC and remains in effect until amended or replaced by OPUC.

(g) Requires that the memorandum required by this section be completed by August 1, 2014.

(h) Requires OPUC and the office of public interest counsel of TCEQ to adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than February 1, 2015.

SECTION 2.97. Requires OPUC to prepare a report describing staffing changes related to the transition describing staffing changes related to the transition described in Section 2.96 of this article, including reductions in staff that the office is authorized to realize as a result of consolidated functions. Requires OPUC to submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2016-2017 biennium.

ARTICLE 3. INTERIM STUDY FOR EVALUATION OF THE POSITION OF COMMISSIONER OF THE PUBLIC UTILITY COMMISSION OF TEXAS

SECTION 3.01. (a) Requires a joint committee to conduct a study to evaluate whether PUC should continue to have three commissioners and the best method of selecting the appropriate number of commissioners.

(b) Provides that the committee is composed of eight members appointed as follows: four members of the senate appointed by the lieutenant governor and four members of the house of representatives appointed by the speaker of the house of representatives.

(c) Requires the speaker of the house of representatives and the lieutenant governor to jointly designate a chair or, alternatively, designate two co-chairs from among the committee membership.

(d) Requires the committee to examine the appropriate number of commissioners, with specific emphasis on whether the number of commissioners on PUC should be reduced to one, and examine whether the appropriate number of commissioners should be appointed or elected.

(e) Authorizes the committee to adopt rules necessary to carry out the committee's duties under this section.

(f) Authorizes the committee, except as otherwise specifically provided by this section, to operate in the same manner as a joint committee of the 83rd Legislature.

(g) Requires the committee, not later than December 1, 2014, to report to the governor and the legislature any recommendations developed by the committee under this section.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date: September 1, 2013.