

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE B. WATER RIGHTS

CHAPTER 13. WATER RATES AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 13.001. LEGISLATIVE POLICY AND PURPOSE. (a) This chapter is adopted to protect the public interest inherent in the rates and services of retail public utilities.

(b) The legislature finds that:

(1) retail public utilities are by definition monopolies in the areas they serve;

(2) the normal forces of competition that operate to regulate prices in a free enterprise society do not operate for the reason stated in Subdivision (1) of this subsection; and

(3) retail public utility rates, operations, and services are regulated by public agencies, with the objective that this regulation will operate as a substitute for competition.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.002. DEFINITIONS. In this chapter:

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

competition.

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

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

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

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

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

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

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

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

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising

substantial influence over the policies and actions of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

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

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

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

(4-b) "Class B utility" means a public utility that provides retail water or sewer utility service through 2,300 or more taps or connections but fewer than 10,000 taps or connections.

(4-c) "Class C utility" means a public utility that provides retail water or sewer utility service through 500 or more taps or connections but fewer than 2,300 taps or connections.

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

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

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

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

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

(9) "Facilities" means all the plant and equipment of a retail public utility, including all tangible and intangible real

and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

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

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

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

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

(13-a) "Municipal utility district" means a political subdivision of this state operating under Chapter 54.

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

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

(16) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under

this chapter and includes the denial of relief or the dismissal of a complaint.

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

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

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

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

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

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

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

(23) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities,

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 1, 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 1, eff. Sept. 1, 1991;

Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.058, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 400, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 6, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.52, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 29, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.05, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.08, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 8, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 1, eff. September 1, 2019.

Sec. 13.003. APPLICABILITY OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Chapter 2001, Government Code applies to all proceedings under this chapter except to the extent inconsistent with this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS.

(a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

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

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

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

Added by Acts 2005, 79th Leg., Ch. 1057 (H.B. 1358), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.09, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 9, eff. September 1, 2013.

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

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

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

(1) accumulation of evidence and other information from water and sewer utilities, from the utility commission or commission, as appropriate, and the governing body of the respective agency, and from other sources for the purposes



specified by this chapter;

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

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

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.10, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 10, eff. September 1, 2013.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.11, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 11, eff. September 1, 2013.

Sec. 13.015. INFORMAL PROCEEDING. A proceeding involving a retail public utility as defined by Section 13.002 of this code may be an informal proceeding, except that the proceeding is subject to the public notice requirements of this chapter and the rules and orders of the regulatory authority involved.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 3, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 3, eff. Sept. 1, 1989.

Sec. 13.016. RECORD OF PROCEEDINGS; RIGHT TO HEARING. A record shall be kept of all proceedings before the regulatory authority, unless all parties waive the keeping of the record, and all the parties are entitled to be heard in person or by attorney.

Added by Acts 1987, 70th Leg., ch. 539, Sec. 4, eff. Sept. 1, 1987.

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

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

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

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

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

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

(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small

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

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

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

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

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

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

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

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

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

(c) This section does not:

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.12, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 12, eff. September 1, 2013.

#### SUBCHAPTER C. JURISDICTION

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

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

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

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

(d) In accordance with Subchapter K-1, the utility commission may issue emergency orders, with or without a hearing:

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

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

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

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

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

(h) In accordance with Subchapter L, Chapter 5, the commission may issue emergency orders, with or without a hearing:

(1) to compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of the commission if necessary to ensure safe drinking water or environmental protection; and

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

(i) On request by the commission, the utility commission may, on an expedited basis, establish reasonable compensation for the temporary service required under Subsection (h)(2) and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(j) If an order is issued under Subsection (h) without a hearing, notice of a hearing under Section 5.504 to affirm, modify, or set aside the order is adequate if the notice is mailed or hand delivered to the last known address of the retail public utility's headquarters.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 4, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.02, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.13, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 13, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 2, eff. September 1, 2019.

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

(b) The governing body of a municipality by ordinance may elect to have the utility commission exercise exclusive original

jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 6, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 5, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.14, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 14, eff. September 1, 2013.

Sec. 13.0421. RATES CHARGED BY CERTAIN MUNICIPALLY OWNED

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

(b) A municipality may not require a municipal utility district to assess a surcharge against users of water or sewer service prior to the annexation of the municipal utility district. Added by Acts 1989, 71st Leg., ch. 567, Sec. 8, eff. Sept. 1, 1989.

Sec. 13.043. APPELLATE JURISDICTION. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the utility commission and by serving copies on all parties to the original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

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

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

(2) a utility under the jurisdiction of a municipality



inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public utility;

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

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

(b-1) A municipally owned utility shall:

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

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

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

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

(b-4) Subsection (b)(3) does not apply to a municipally owned utility that takes over the provision of service to ratepayers previously served by another retail public utility if

the municipally owned utility:

(1) takes over the service at the request of the ratepayer;

(2) takes over the service in the manner provided by Subchapter H; or

(3) is required to take over the service by state law, an order of the commission, or an order of the utility commission.

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

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

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

by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

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

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

(h) The utility commission may, on a motion by the utility commission or by the appellant under Subsection (a), (b), or (f), establish interim rates to be in effect until a final decision is

made.

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 7, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 852, Sec. 2, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 549, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 7, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 18.53, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 9.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.15, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. [567](#)), Sec. 15, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. [1148](#)), Sec. 4, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 279 (H.B. [3689](#)), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 367 (S.B. [387](#)), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1025 (H.B. [872](#)), Sec. 5, eff. June 18, 2021.

Sec. 13.0431. APPEALS BY RETAIL PUBLIC UTILITIES. (a) In an appeal under Section [13.043](#)(f) on the amount paid for water or sewer service under a written contract, the utility commission may not hold a hearing on or otherwise prescribe just and reasonable amounts to be charged under the contract unless the utility commission determines that the amount charged under the contract harms the public interest. A determination under this subsection becomes final for purposes of appeal in the manner provided by Section [2001.144](#), Government Code.

(b) A party adversely affected by a determination under Subsection (a) may seek judicial review of the determination. Judicial review of a determination under Subsection (a) shall be by trial de novo.

(c) The utility commission shall abate proceedings on the contract in the event of an appeal under Subsection (b) until the entry of a final judicial determination that a rate charged under the contract harms the public interest.

(d) Chapter [2001](#), Government Code, applies to an appeal under Subsection (b).

(e) The utility commission shall, before holding a hearing on or otherwise prescribing a just and reasonable rate to be charged

under the contract, allow the contracting parties to amend the amount charged under the contract until at least 60 days after the date:

(1) of a final judicial determination in an appeal under Subsection (b) that a rate charged under the contract harms the public interest; or

(2) the determination made under Subsection (a) became final if a motion for rehearing was not filed on time.

(f) If the parties amend their contract under Subsection (e), a party may challenge before the utility commission the rate paid under the amended contract only:

(1) after the 5th anniversary of the date of the contract amendment; or

(2) during a period agreed to by the parties that begins after the 5th anniversary of the date of the contract amendment and ends on or before the 25th anniversary of that date.

Added by Acts 2021, 87th Leg., R.S., Ch. 307 (S.B. 997), Sec. 2, eff. September 1, 2021.

Sec. 13.044. RATES CHARGED BY MUNICIPALITY TO CERTAIN SPECIAL DISTRICTS. (a) This section applies to rates charged by a municipality for water or sewer service to a district created pursuant to Article XVI, Section 59, of the Texas Constitution, or to the residents of such district, which district is located within the corporate limits or the extraterritorial jurisdiction of the municipality and the resolution, ordinance, or agreement of the municipality consenting to the creation of the district requires the district to purchase water or sewer service from the municipality.

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

the utility commission.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 7, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.16, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 16, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 849 (H.B. 2369), Sec. 2, eff. June 15, 2017.

Sec. 13.0441. FEES CHARGED BY MUNICIPALITY TO PUBLIC SCHOOL DISTRICTS. (a) This section applies only to fees charged by a municipality for water or sewer service to a public school district.

(b) Notwithstanding the provisions of a resolution, ordinance, or agreement, a public school district charged a fee that violates Section 13.088 may appeal the charge by filing a petition with the utility commission. The utility commission shall hear the appeal de novo, and the municipality charging the fee has the burden of proof to establish that the fee complies with Section 13.088. The utility commission shall fix the fees to be charged by the municipality in accordance with this chapter, including Section 13.088.

Added by Acts 2017, 85th Leg., R.S., Ch. 849 (H.B. 2369), Sec. 3, eff. June 15, 2017.

Sec. 13.045. NOTIFICATION REGARDING USE OF REVENUE. At least annually and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure not water or sewer related funded in whole or in part by customer revenue.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.28, eff. Sept. 1, 1997.

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The utility commission by rule shall establish a procedure that allows

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

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

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

(d) At the time the utility commission approves the acquisition of a nonfunctioning retail water or sewer utility service provider under Section [13.301](#), the utility commission shall:

(1) determine the duration of the temporary rates for the retail public utility, which must be for a reasonable period; and

(2) rule on the reasonableness of the temporary rates under Subsection (b) if the utility commission did not make a ruling before the application was filed under Section [13.301](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 599 (H.B. [149](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.17,



eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 17, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 3, eff. September 1, 2019.

#### SUBCHAPTER D. MUNICIPALITIES AND COUNTIES

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 18, eff. September 1, 2013.

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

(b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the utility commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within

its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the utility commission or other standards and rules not inconsistent with them. The utility commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 9, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 19, eff. September 1, 2013.

Sec. 13.083. RATE DETERMINATION. A municipality regulating its water and sewer utilities under this chapter shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for this determination shall be based on the procedures and requirements of

this chapter, and the municipality shall retain any personnel necessary to make the determination of reasonable rates required under this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.084. AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT. The governing body of any municipality or the commissioners court of an affected county shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body or the commissioners court for the reasonable costs of those services and shall be allowed to recover those expenses through its rates with interest during the period of recovery.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 10, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 979, Sec. 9, eff. June 16, 1995.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 979, Sec. 10, eff. June 16, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 20, eff. September 1, 2013.

Sec. 13.086. FAIR WHOLESale RATES FOR WHOLESale WATER SALES TO A WATER DISTRICT. (a) A municipality that makes a wholesale sale of water to a special district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and that operates under Title 4 or under Chapter 36 shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

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

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.29, eff. Sept. 1, 1997.

Sec. 13.087. MUNICIPAL RATES FOR CERTAIN RECREATIONAL VEHICLE PARKS. (a) In this section:

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

(2) "Recreational vehicle" includes a:

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

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

(3) "Recreational vehicle park" means a commercial property:

(A) that is designed primarily for recreational vehicle transient guest use; and

(B) for which fees for site service connections for recreational vehicles, as defined by Section 522.004(b), Transportation Code, are paid daily, weekly, or monthly.

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

serve transient customers and receive nonsubmetered master metered utility service from the utility.

(b-1) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park may not charge a recreational vehicle park a fee that the utility does not charge other commercial businesses that serve transient customers and receive nonsubmetered master metered utility service from the utility.

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section. Added by Acts 2005, 79th Leg., Ch. 523 (H.B. 841), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 991 (H.B. 2152), Sec. 1, eff. September 1, 2013.

Sec. 13.088. MUNICIPAL FEES FOR PUBLIC SCHOOL DISTRICTS. A municipally owned utility that provides retail water or sewer utility service to a public school district may not charge the district a fee based on the number of district students or employees in addition to the rates the utility charges the district for the service.

Added by Acts 2017, 85th Leg., R.S., Ch. 849 (H.B. 2369), Sec. 4, eff. June 15, 2017.

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

Sec. 13.131. RECORDS OF UTILITY; RATES, METHODS, AND ACCOUNTS. (a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business

transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

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

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

the merchandise is not integral to the provision of utility service.

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

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

(g) Repealed by Acts 1987, 70th Leg., ch. 539, Sec. 32, eff. Sept. 1, 1987.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 32, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1242 (S.B. [2306](#)), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.22, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. [567](#)), Sec. 22, eff. September 1, 2013.

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

(1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter, including any information relating

to a transaction between the utility and an affiliated interest inside or outside this state, to the extent that the transaction is subject to the utility commission's jurisdiction;

(2) establish forms for all reports;

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

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

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.23, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 23, eff. September 1, 2013.

Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On request, the utility commission shall provide, at a reasonable cost, electronic copies of or Internet access to all information provided to the utility commission under Sections 13.016 and 13.043 and Subchapter F to the extent that the information is available and



is not confidential. Copies of all information provided to the utility commission shall be provided to the Office of Public Utility Counsel, on request, at no cost to the office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 7.01, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.24, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 24, eff. September 1, 2013.

Sec. 13.133. INSPECTIONS; EXAMINATION UNDER OATH; COMPELLING PRODUCTION OF RECORDS; INQUIRY INTO MANAGEMENT AND AFFAIRS. (a) Any regulatory authority and, when authorized by the regulatory authority, its counsel, agents, and employees may, at reasonable times and for reasonable purposes, inspect and obtain copies of the papers, books, accounts, documents, and other business records and inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath or may authorize the person conducting the investigation to examine under oath any officer, agent, or employee of any utility in connection with the investigation.

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

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 11, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.25, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 25, eff. September 1, 2013.

Sec. 13.134. REPORT OF ADVERTISING OR PUBLIC RELATIONS EXPENSES. (a) The regulatory authority may require an annual report from each utility company of all its expenditures for business gifts and entertainment and institutional, consumption-inducing, and other advertising or public relations expenses.

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.135. UNLAWFUL RATES, RULES, AND REGULATIONS. A utility may not charge, collect, or receive any rate for utility service or impose any rule or regulation other than as provided in this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.136. FILING TARIFFS OF RATES, RULES, AND REGULATIONS; ANNUAL FINANCIAL REPORT. (a) Every utility shall file with each regulatory authority tariffs showing all rates that are subject to the original or appellate jurisdiction of the regulatory authority and that are in force at the time for any utility service, product, or commodity offered. Every utility shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished.

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

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

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

under this subsection shall be for informational purposes only.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 8, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 12, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 3, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.26, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 26, eff. September 1, 2013.

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

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

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

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 13, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 966, Sec. 10.01, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.27, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 27, eff. September 1, 2013.

Sec. 13.138. COMMUNICATIONS BY UTILITIES WITH REGULATORY AUTHORITY; REGULATIONS AND RECORDS. The regulatory authority may prescribe regulations governing communications by utilities and their affiliates and their representatives with the regulatory authority or any member or employee of the regulatory authority.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 14, eff. Sept. 1, 1989.

Sec. 13.139. STANDARDS OF SERVICE. (a) Every retail public utility that possesses or is required to possess a certificate of public convenience and necessity and every district and affected county that furnishes retail water or sewer utility service, shall furnish the service, instrumentalities, and facilities as are safe, adequate, efficient, and reasonable.

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

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

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure,

or other condition pertaining to the supply of the service;

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 15, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.285, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 400, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 11, eff. June 16, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.28, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 28, eff. September 1, 2013.

Sec. 13.1394. STANDARDS OF EMERGENCY OPERATIONS. (a) In this section:

(1) "Affected utility" means a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that:

(A) furnishes water service to more than one customer; and

(B) is not an affected utility under Section [13.1395](#).

(2) "Emergency operations" means the operation of a water system during an extended power outage that impacts the operating affected utility.

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

(b) An affected utility shall:

(1) ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per square inch, or at a water pressure level approved by the commission, as soon as safe and practicable following the occurrence of a natural disaster; and

(2) adopt and submit to the commission for its approval:

(A) an emergency preparedness plan that demonstrates the utility's ability to provide the emergency operations described by Subdivision (1); and

(B) a timeline for implementing the plan described by Paragraph (A).

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

(1) the maintenance of automatically starting

auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;

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

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

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

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

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

(8) designation of the water system as a critical load facility or redundant, isolated, or dedicated electrical feeds;

(9) water storage capabilities;

(10) water supplies delivered from outside the service area of the affected utility;

(11) the ability to provide water through artesian flows;

(12) redundant interconnectivity between pressure zones;

(13) emergency water demand rules to maintain emergency operations; or

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

(d) Each affected utility that supplies, provides, or conveys raw surface water shall include in its emergency preparedness plan under Subsection (b) provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility to provide raw water service to its wholesale customers during emergencies. This subsection does



not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

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

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

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

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

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

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

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

(j) The commission shall consider whether compliance with this section will cause a significant financial burden on customers of an affected utility when making recommended changes under Subsection (c).

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

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

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

Added by Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 26, eff. June 8, 2021.

Sec. 13.1395. STANDARDS OF EMERGENCY OPERATIONS IN CERTAIN COUNTIES. (a) In this section:

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

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

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

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

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

(b) An affected utility shall:

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

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

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

(1) the maintenance of automatically starting auxiliary generators;

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

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements

provide for coordination with the division of emergency management in the governor's office;

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

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

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

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

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

(c-1) An emergency preparedness plan submitted under Subsection (b) may provide for the prioritization of water restoration to an end stage renal disease facility, as that term is defined by Section 251.001, Health and Safety Code, in the same manner as an affected utility restores service to a hospital following an extended power outage. The affected utility must restore the service in accordance with:

(1) the facility's needs;

(2) the affected community's needs; and

(3) the characteristics of the geographic area in which water is to be restored.

(d) This subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract. Each affected utility that supplies, provides, or conveys surface water shall include in its emergency preparedness plan under Subsection (b) provisions:

(1) for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers during emergencies; or

(2) that demonstrate the capability of each raw water intake pump station, water treatment plant, pump station, and pressure facility to provide water to its wholesale customers

during emergencies through alternative means acceptable to the commission.

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

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

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

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

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

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

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

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

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1349 (S.B. 361), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 723 (H.B. 805), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.29, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 29, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 27, eff. June 8, 2021.

Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 28, eff. June 8, 2021.

Acts 2021, 87th Leg., R.S., Ch. 961 (S.B. 1876), Sec. 4, eff. September 1, 2021.

Sec. 13.1396. COORDINATION OF EMERGENCY OPERATIONS. (a) In this section:

(1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 32, eff. June 8, 2021.

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

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

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

(a-1) This section applies only to an affected utility, as defined by Section 13.1394 or 13.1395.

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

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

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

(c) Each affected utility shall submit to the utility commission, each electric utility that provides transmission and distribution service to the affected utility, each retail electric

provider that sells electric power to the affected utility, the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by the utility commission, and the division of emergency management of the governor:

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

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

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

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

(C) the affected utility's mailing address.

(d) An affected utility shall:

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

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

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

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

(g) If an electric utility determines that an affected utility's facilities do not qualify for critical load status, the electric utility and the retail electric provider, not later than

the 30th day after the date the electric utility or retail electric provider receives the information required by Subsections (c) and (d), shall provide a detailed explanation of the electric utility's determination to the affected utility and the office of emergency management of each county in which the affected utility's facilities are located.

Added by Acts 2009, 81st Leg., R.S., Ch. 1349 (S.B. 361), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 539 (H.B. 2619), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 539 (H.B. 2619), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.30, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 30, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 29, eff. June 8, 2021.

Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 32, eff. June 8, 2021.

Sec. 13.140. EXAMINATION AND TEST OF EQUIPMENT. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of service of any utility and may enter any premises occupied by any utility for the purpose of making the examinations and tests and exercising any power provided for in this chapter and may set up and use on those premises any apparatus and appliances necessary for those purposes. The utility may be represented at the making of the examinations, tests, and inspections.

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

(c) Any consumer or user may have a meter or measuring device tested by the utility once without charge after a reasonable

period to be fixed by the regulatory authority by rule and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing of those meters and other measuring devices on the request of the consumer.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.141. BILLING FOR SERVICE TO STATE. A utility, utility owned by an affected county, or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is rendered.

Added by Acts 1993, 73rd Leg., ch. 660, Sec. 7, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 979, Sec. 12, eff. June 16, 1995.

Sec. 13.142. TIME OF PAYMENT OF UTILITY BILLS BY STATE. (a) In this section, "utility" includes a municipally owned utility.

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

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



quarterly.

Added by Acts 1993, 73rd Leg., ch. 660, Sec. 7, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(7), eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.31, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 31, eff. September 1, 2013.

Sec. 13.143. VOLUNTARY CONTRIBUTIONS. (a) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution, including a voluntary membership or subscription fee, on behalf of a local library, a volunteer fire department, or an emergency medical service.

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

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

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

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

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

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

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

the lesser of:

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

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

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

Added by Acts 1997, 75th Leg., ch. 409, Sec. 1, eff. May 28, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 263 (H.B. 693), Sec. 1, eff. June 14, 2013.

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 5.13, eff. Sept. 1, 1997. Renumbered from Sec. 13.143 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(110), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 10.02, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.32, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 32, eff. September 1, 2013.

Sec. 13.145. MULTIPLE SYSTEMS CONSOLIDATED UNDER TARIFF.

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

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

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

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

Added by Acts 2001, 77th Leg., ch. 966, Sec. 10.03, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 871 (S.B. 1063), Sec. 2, eff. September 1, 2005.

Sec. 13.146. WATER CONSERVATION PLAN. The commission shall require a retail public utility that provides potable water service to 3,300 or more connections to:

(1) submit to the executive administrator of the board a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies;

(2) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and

(3) identify, in writing, the water conservation coordinator to the executive administrator of the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 6, eff. June 15, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 146 (H.B. 1648), Sec. 1, eff.

September 1, 2017.

Sec. 13.1461. CORRECTIONAL FACILITY COMPLIANCE WITH CONSERVATION MEASURES. (a) This section applies only to a correctional facility operated by the Texas Department of Criminal Justice or operated under contract with that department.

(b) Except as provided by Subsection (c), a retail public utility may require the operator of a correctional facility that receives retail water or sewer utility service from the retail public utility to comply with water conservation measures adopted or implemented by the retail public utility.

(c) A correctional facility is not required to comply with a water conservation measure under Subsection (b) if the operator of the correctional facility submits to the retail public utility a written statement from the Texas Department of Criminal Justice that states that the measure would endanger health and safety at the facility or unreasonably increase the costs of operating the facility.

(d) If a retail public utility suspends a water conservation measure and later implements the same measure, the operator of a correctional facility that received an exemption from the original measure under Subsection (c) must submit a new written statement from the Texas Department of Criminal Justice to obtain an exemption under Subsection (c) from the newly implemented measure. Added by Acts 2017, 85th Leg., R.S., Ch. 248 (H.B. 965), Sec. 1, eff. May 29, 2017.

Sec. 13.147. CONSOLIDATED BILLING AND COLLECTION CONTRACTS.

(a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water

service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

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

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

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

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

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.06, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.33, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 33, eff. September 1, 2013.

Sec. 13.148. WATER SHORTAGE REPORT. (a) A retail public utility and each entity from which the utility is obtaining wholesale water service for the utility's retail system shall notify the commission when the utility or entity is reasonably certain that the water supply will be available for less than 180 days.

(b) The commission shall adopt rules to implement this section and prescribe the form and content of notice required under

this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 234 (H.B. 252), Sec. 1, eff. September 1, 2013.

Sec. 13.149. NOTIFICATION OF WATER LOSS. (a) The commission by rule shall require a retail public utility that files a water audit required by Section 16.0121 to notify each of the utility's customers of the water loss reported in the water audit.

(b) A retail public utility shall provide the notice required under Subsection (a) on or with:

(1) the utility's next annual consumer confidence report delivered after the water audit is filed; or

(2) the next bill the customer receives after the water audit is filed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 305 (H.B. 1461), Sec. 1, eff. September 1, 2013.

Redesignated from Water Code, Section 13.148 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(69), eff. September 1, 2019.

Sec. 13.150. REPORTS REQUIRED FOR WATER AND SEWER UTILITIES. (a) This section applies only to a utility that provides retail water or sewer utility service through fewer than 10,000 taps or connections.

(b) Except as provided by Subsection (c), a utility shall deliver to the utility commission a report of the utility's financial, managerial, and technical capacity to provide continuous and adequate service to its customers not later than the third anniversary of the date that the utility violates a final order of the commission by failing to:

(1) provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system;

(2) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(3) maintain accurate or properly calibrated testing

equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

(c) A utility that has an existing obligation to deliver a report under Subsection (b) is not required to deliver another report as a result of the occurrence of an event described by Subsection (b) if the event occurs before the date that the utility delivers the report required by Subsection (b).

(d) On receiving notice that a utility has violated an order described by Subsection (b), the commission shall provide written notice of the violation to the utility commission.

(e) The utility commission shall deliver a copy of a report received under Subsection (b) to:

(1) each state senator representing a district that contains a portion of the service area of the utility that submitted the report; and

(2) each state representative representing a district that contains a portion of the service area of the utility that submitted the report.

(f) If a utility fails to deliver a report in accordance with Subsection (b), the utility commission shall report the failure to:

(1) the commission;

(2) each state senator representing a district that contains a portion of the utility's service area; and

(3) each state representative representing a district that contains a portion of the utility's service area.

Added by Acts 2019, 86th Leg., R.S., Ch. 545 (H.B. [3542](#)), Sec. 1, eff. September 1, 2019.

Sec. 13.151. BILLING FOR SERVICES PROVIDED DURING EXTREME WEATHER EMERGENCY. (a) In this section, "extreme weather emergency" means a period when the previous day's highest temperature did not exceed 28 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports.

(b) A retail public utility that is required to possess a

certificate of public convenience and necessity or a district or affected county that furnishes retail water or sewer utility service shall not impose late fees or disconnect service for nonpayment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers that request to establish a payment schedule for unpaid bills that are due during the extreme weather emergency.

Added by Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 30, eff. June 8, 2021.

#### SUBCHAPTER F. PROCEEDINGS BEFORE REGULATORY AUTHORITY

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 16, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 652, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 979, Sec. 13, eff. June 16, 1995; Acts



1997, 75th Leg., ch. 1010, Sec. 6.03, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.34, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 34, eff. September 1, 2013.

Sec. 13.182. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

(b) Except as provided by Subsection (b-1), rates may not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(b-1) In establishing a utility's rates, the regulatory authority may authorize the utility to establish reduced rates for a minimal level of service to be provided solely to a class of elderly customers 65 years of age or older to ensure that those customers receive that level of service at more affordable rates. The regulatory authority shall allow a utility to establish a fund to receive donations to recover the costs of providing the reduced rates. A utility may not recover those costs through charges to the utility's other customer classes.

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 10.04, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.35,

eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 35, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 129 (H.B. 1083), Sec. 1, eff. September 1, 2017.

Sec. 13.183. FIXING OVERALL REVENUES. (a) In fixing the rates for water and sewer services, the regulatory authority shall fix its overall revenues at a level that will:

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

(2) preserve the financial integrity of the utility.

(b) In a rate proceeding, the regulatory authority may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service if an accurate accounting of the collection and use of those funds is provided to the regulatory authority. A facility constructed with surcharge funds is considered customer contributed capital or contributions in aid of construction and may not be included in invested capital, and depreciation expense is not allowed.

(c) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority, by rule or ordinance, as appropriate, may adopt specific alternative ratemaking methodologies for water or sewer rates to allow for more timely and efficient cost recovery. Appropriate alternative ratemaking methodologies are the introduction of new customer classes, the cash needs method, and phased and multi-step rate changes. The regulatory authority may also adopt system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment. The utility commission by rule shall establish a schedule that requires all

utilities that have implemented a system improvement charge approved by the utility commission to make periodic filings with the utility commission to modify or review base rates charged by the utility. Overall revenues determined according to an alternative ratemaking methodology adopted under this section must provide revenues to the utility that satisfy the requirements of Subsection (a). The regulatory authority may not approve rates under an alternative ratemaking methodology unless the regulatory authority adopts the methodology before the date the rate application was administratively complete.

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 9, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 17, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.04, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 10.05, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.36, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 36, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 4, eff. September 1, 2019.

Sec. 13.184. FAIR RETURN; BURDEN OF PROOF. (a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.05, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.37, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 37, eff. September 1, 2013.

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

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

(b) Utility rates shall be based on the original cost of property used by and useful to the utility in providing service, including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the books of the utility. The inclusion of construction work in progress is an

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

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

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

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

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

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

(f) If the utility is a member of an affiliated group that is

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

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

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

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

(2) costs of processing a refund or credit under this subchapter; or

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

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

capital.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 10, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 18, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.06, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.38, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 38, eff. September 1, 2013.

Sec. 13.186. UNREASONABLE OR VIOLATIVE EXISTING RATES; INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. (a) If the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any utility for any service are unreasonable or in any way in violation of any law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be observed and in force, and shall fix the same by order to be served on the utility. Those rates constitute the legal rates of the utility until changed as provided in this chapter.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 19, eff. Sept. 1, 1989.

Sec. 13.1861. RATES CHARGED STATE. The rates that a utility or municipally owned utility charges the state or a state agency or institution may not include an amount representing a gross receipts assessment, regulatory assessment, or other similar expense. A regulatory authority may adopt reasonable rules specifying similar expenses to be excluded.

Added by Acts 1993, 73rd Leg., ch. 660, Sec. 8, eff. Sept. 1, 1993.

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

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

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

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

(A) 5,000 gallons of water; and

(B) 10,000 gallons of water;

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 5,000 gallons, unless the utility proposes a flat rate for sewer services; and

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

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



rules.

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

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

(d-1) After written notice to the utility, a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(e) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 150 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the

proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

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

(f) The regulatory authority shall, not later than the 30th day after the effective date of the change, begin a hearing to determine the propriety of the change. If the regulatory authority is the utility commission, the utility commission may refer the matter to the State Office of Administrative Hearings as provided by utility commission rules.

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

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

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

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

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

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

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

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

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

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

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

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

(p) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility

system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 11, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 20, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 5, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.03, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 402, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 3.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 10.06, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1106 (H.B. [2301](#)), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 9.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 180, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.39, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. [567](#)), Sec. 39, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. [1148](#)), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. [700](#)), Sec. 5, eff. September 1, 2019.

Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as provided by Sections [13.18715](#) and [13.1872](#), this section applies only to a Class B utility.

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

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

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

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

(A) 5,000 gallons of water; and

(B) 10,000 gallons of water;

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 5,000 gallons, unless the utility proposes a flat rate for sewer services; and

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

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

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

(e) Except as provided by Subsection (f) or (g), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules,

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

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

(g) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 265 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

(h) The 265-day period described by Subsection (g) shall be extended by two days for each day a hearing exceeds 15 days.

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

(j) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (i), the regulatory authority

may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (h), the proposed rate may not be suspended for longer than:

- (1) 90 days by a local regulatory authority; or
- (2) 265 days by the utility commission.

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

- (1) The hearing may be informal.

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

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

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

(p) A utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the utility commission is exercising appellate or original jurisdiction, by filing a bond with the utility commission if the suspension period has been extended under Subsection (h) and the utility commission fails to make a final determination before the 266th day after the date the rate change would otherwise be effective.

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

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

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

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

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

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

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

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

(w) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility



system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.40, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 40, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 18.001, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 6, eff. September 1, 2019.

Sec. 13.18715. CLASS C UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This section applies only to a Class C utility.

(b) A utility may not make changes in its rates except by complying with the procedures to change rates described by Section 13.1871.

(c) Notwithstanding Section 13.1871(n), the utility may send the notice required by that subsection by mail or e-mail or may deliver a copy of the notice to the ratepayers.

Added by Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 7, eff. September 1, 2019.

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

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 14, eff. September 1, 2019.

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

(1) filing an application for a rate adjustment under

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

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

(c-1) A utility that chooses to comply with Section 13.1871 as authorized under Subsection (c)(2) of this section may send the notice required by Section 13.1871(n) by mail or e-mail or may deliver a copy of the notice to the ratepayers.

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

(e) The utility commission by rule shall adopt procedures to allow a utility to receive without a hearing an annual rate adjustment. The rules must:

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.40, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 40, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 8, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 9, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 14, eff. September 1, 2019.

Sec. 13.1873. APPLICATION RULES. In adopting rules relating to the information required in an application for a Class B, Class C, or Class D utility to change rates, the utility commission shall ensure that a:

(1) Class B utility can file a less burdensome and complex application than is required of a Class A utility; and

(2) Class C or Class D utility can file a less burdensome and complex application than is required of a Class A or Class B utility.

Added by Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 10, eff. September 1, 2019.

Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS.

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

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

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

(2) if the utility commission determines that there is substantial public interest in the matter.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.07,

eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.41, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 41, eff. September 1, 2013.

Sec. 13.189. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES. (a) A water and sewer utility as to rates or services may not make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage.

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

(c) For purposes of this section, a reduced rate authorized under Section 13.182(b-1) does not:

(1) make or grant an unreasonable preference or advantage to any corporation or person;

(2) subject a corporation or person to an unreasonable prejudice or disadvantage; or

(3) constitute an unreasonable difference as to rates of service between classes of service.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 129 (H.B. 1083), Sec. 2, eff. September 1, 2017.

Sec. 13.190. EQUALITY OF RATES AND SERVICES. (a) A water and sewer utility may not directly or indirectly by any device or in any manner charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable to that service when filed in the manner provided in this chapter, and a person may not knowingly

receive or accept any service from a utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a utility on the effective date of this chapter may be continued until schedules are filed.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.191. DISCRIMINATION; RESTRICTION ON COMPETITION. A water and sewer utility may not discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, and a utility may not engage in any other practice that tends to restrict or impair that competition.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.192. PAYMENTS IN LIEU OF TAXES. Payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may not be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the utility is owned.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

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

Sec. 13.241. GRANTING CERTIFICATES. (a) In determining whether to grant or amend a certificate of public convenience and necessity, the utility commission shall ensure that the applicant

possesses the financial, managerial, and technical capability to provide continuous and adequate service.

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

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

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

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

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

(e) The utility commission by rule shall develop a standardized method for determining under Section 13.246(f) which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area is more capable financially, managerially, and technically of providing continuous and adequate service. In this subsection, "economically distressed area" has the meaning assigned by Section 15.001.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.07, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 30, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.42, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 42, eff.

September 1, 2013.

Sec. 13.242. CERTIFICATE REQUIRED. (a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

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

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

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

chapter to obtain the certificate.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 13, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 21, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 652, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 979, Sec. 14, eff. June 16, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.43, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 43, eff. September 1, 2013.

Sec. 13.243. EXCEPTIONS FOR EXTENSION OF SERVICE. A retail public utility is not required to secure a certificate of public convenience and necessity for:

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 14, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 22, eff. Sept. 1, 1989.

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) Except as provided by Section 13.258, to obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.



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

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

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

(1) a description of the proposed service area by:

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

(B) the Texas State Plane Coordinate System;

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

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

(2) a description of any requests for service in the proposed service area;

(3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;

(4) a description of the sources of funding for all facilities;

(5) to the extent known, a description of current and projected land uses, including densities;

(6) a current financial statement of the applicant;

(7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 50 acres; and

(B) wholly or partially located within the proposed service area; and

(8) any other item required by the utility commission. Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 23, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.286, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 4, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.44, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 44, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 2, eff. September 1, 2017.

Sec. 13.245. MUNICIPAL BOUNDARIES OR EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 500,000 or more.

(b) Except as provided by Subsections (c), (c-1), and (c-2), the utility commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent.

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

(1) does not have the ability to provide service; or

(2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail

public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the utility commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the utility commission may grant the certificate of public convenience and necessity without the consent of the municipality if:

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

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

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

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

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

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

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

(c-4) The utility commission must include, as a condition of a certificate of public convenience and necessity granted under this section for a service area within the extraterritorial

jurisdiction of a municipality, that all water and sewer facilities be designed and constructed in accordance with:

(1) the commission's standards for water and sewer facilities applicable to water systems that serve greater than 250 connections; or

(2) the commission's standards for water and sewer facilities applicable to water systems that serve 250 or fewer connections, if the utility commission determines that:

(A) standards for water and sewer facilities applicable to water systems that serve 250 or fewer connections are appropriate for the service area; and

(B) regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under Section [13.241\(d\)](#).

(c-5) Subsections (c-1), (c-2), (c-3), and (c-4) do not apply to:

(1) a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county;

(2) a county with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(3) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (2).

(c-6) Subsections (c-1), (c-2), (c-3), and (c-4) do not apply to:

(1) a county with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

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

(e) If the utility commission makes a decision under

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

Added by Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 5, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. 573), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.45, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 45, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 715 (H.B. 3476), Sec. 1, eff. September 1, 2021.

Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL JURISDICTION. (a) Except as provided by Subsection (b), if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

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

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

county.

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

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

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

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(2) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 5, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.08, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. 573), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.46, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 46, eff. September 1, 2013.

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

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

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

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

that continuous and adequate service is provided.

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

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

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

(7) environmental integrity;

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

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

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

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



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

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

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

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

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

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the

landowner's property in the proposed service area at a hearing held by the utility commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

(j) This section does not apply to an application under Section [13.258](#).

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 15, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 24, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 6.08, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 31, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. [2876](#)), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 2.09, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 363 (H.B. [1295](#)), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. [573](#)), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.47, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. [567](#)), Sec. 47, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. [1842](#)), Sec. 3, eff. September 1, 2017.

Sec. 13.247. AREA WITHIN MUNICIPALITY. (a) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of

eminent domain to acquire the property of the retail public utility under Subsection (d). Except as provided by Section [13.2475](#) or [13.255](#), a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the utility commission a certificate of public convenience and necessity that includes the areas to be served.

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 25, eff. Sept. 1, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. [2876](#)), Sec. 7, eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 8, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.48, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 48, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 673 (S.B. 789), Sec. 1, eff. September 1, 2015.

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

(a) This section applies only to a municipality:

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

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

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

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

- (1) petition the utility commission to decertify its certificate for the area to be served by the municipality; or

(2) discontinue service to the area to be served by the municipality, provided that there is no interruption of service to any customer.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 673 (S.B. 789), Sec. 2, eff. September 1, 2015.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 26, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.49, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 49, eff. September 1, 2013.

Sec. 13.250. CONTINUOUS AND ADEQUATE SERVICE; DISCONTINUANCE, REDUCTION, OR IMPAIRMENT OF SERVICE. (a) Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

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

discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

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

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

(3) nonuse; or

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

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

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

(1) nonpayment of charges;

(2) nonuse; or

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

(e) Not later than the 48th hour after the hour in which a

utility files a bankruptcy petition, the utility shall report this fact to the utility commission and the commission in writing.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 16, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1102, Sec. 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 27, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 652, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 5, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.50, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 50, eff. September 1, 2013.

Sec. 13.2501. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047, Local Government Code.

Added by Acts 1987, 70th Leg., ch. 1102, Sec. 6, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(f), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.13, eff. Sept. 1, 1989.

Sec. 13.2502. SERVICE EXTENSIONS BY WATER SUPPLY AND SEWER SERVICE CORPORATION OR SPECIAL UTILITY DISTRICT. (a) Notwithstanding Section 13.250, a water supply or sewer service corporation or a special utility district organized under Chapter 65 is not required to extend retail water or sewer utility service within the certificated area of the corporation or special utility district to a service applicant in a subdivision if the corporation or special utility district documents that:

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

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

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

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

(1) an agreement executed by the developer;

(2) correspondence with the developer that sets forth the subdivision service extension policy; or

(3) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.

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

(e) For purposes of this section:

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

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

Added by Acts 1995, 74th Leg., ch. 400, Sec. 6, eff. Sept. 1, 1995.

Amended by:



Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.51, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 51, eff. September 1, 2013.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 17, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 28, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 8, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.52, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 52, eff. September 1, 2013.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 18, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 29, eff. Sept. 1, 1989. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.53, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 53, eff. September 1, 2013.

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

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

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

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the utility commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the utility commission;

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

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide

continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 19, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 30, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.09, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.54, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 54, eff. September 1, 2013.

Sec. 13.254. DECERTIFICATION INITIATED BY UTILITY

COMMISSION OR UTILITY; EXPEDITED RELEASE INITIATED BY LANDOWNER.

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

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

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

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

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

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and

the receipt of services from an alternative provider. On the day the petitioner submits the petition to the utility commission, the petitioner shall send, via certified mail, a copy of the petition to the certificate holder, who may submit information to the utility commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

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

(A) the area for which service is sought;

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

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

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

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

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

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

(3) the certificate holder:

(A) has refused to provide the service;

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

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

commission; and

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

(a-2) A landowner is not entitled to file a petition under Subsection (a-1) or Section [13.2541](#) but is entitled to contest under Subsection (a) the involuntary certification of the landowner's property in a hearing held by the utility commission if the landowner's property is located:

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

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

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

(a-4) Chapter [2001](#), Government Code, does not apply to any

petition filed under Subsection (a-1). The decision of the utility commission on the petition is final after any reconsideration authorized by the utility commission's rules and may not be appealed.

(a-5) Expired.

(a-6) Expired.

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

(1) a proceeding under this section related to certification or decertification;

(2) the reason or reasons for the proposed rate change; and

(3) any bill payment assistance program available to low-income ratepayers.

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

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

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

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

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

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(2) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

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

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

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless just and adequate compensation required under Subsection (g) has been paid to the decertified retail public utility.

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

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

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter [21](#), Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring



that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 20, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 31, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 652, Sec. 4, eff. Aug. 30, 1993; Acts

1997, 75th Leg., ch. 1010, Sec. 6.10, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 9, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 13(1), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1325 (S.B. 573), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.55, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 55, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 4, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 226 (H.B. 837), Sec. 1, eff. September 1, 2021.

Sec. 13.2541. STREAMLINED EXPEDITED RELEASE INITIATED BY LANDOWNER. (a) Sections 13.254(a-7), (c), (d), and (h) apply to a proceeding under this section.

(b) As an alternative to decertification or expedited release under Section 13.254, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity in the manner provided by this section and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.

(c) The utility commission shall grant the petition not later than the 60th day after the date the landowner files the petition.

(d) The utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal loan program.

(e) The certificate holder may not initiate an application to borrow money under a federal loan program after the date the petition is filed until the utility commission issues a decision on the petition.

(f) The utility commission may require an award of compensation by the petitioner to the certificate holder in the manner provided by this section. If the utility commission requires an award of compensation, the utility commission shall require the petitioner to submit a report to the utility commission verifying for the purposes of Subsection (j) that the compensation has been paid to the certificate holder.

(g) The monetary amount of compensation, if any, shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the certificate holder and the petitioner. The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the petitioner.

(h) Section [13.254\(g\)](#) applies to a determination of the monetary amount of compensation under this section.

(i) If the petitioner and the certificate holder cannot agree on an independent appraiser within 10 calendar days after the date on which the utility commission approves the petition, the petitioner and the certificate holder shall each engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 70 calendar days after the date on which the utility commission approves the petition. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 100 days after the date on which the utility commission approves the petition. The determination may not be less than the lower appraisal or more than the higher appraisal. The petitioner

and the certificate holder shall each pay half the cost of the third appraisal.

(j) The utility commission shall ensure that:

(1) the monetary amount of compensation is determined not later than the 60th day after the date the utility commission receives the final appraisal; and

(2) the landowner pays the compensation to the certificate holder not later than the 90th calendar day after the date the monetary amount of compensation is determined.

Added by Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 3, eff. September 1, 2019.

Transferred, redesignated and amended by Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 4, eff. September 1, 2019.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 688 (S.B. 2272), Sec. 5, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 226 (H.B. 837), Sec. 2, eff. September 1, 2021.

Sec. 13.255. SINGLE CERTIFICATION IN INCORPORATED OR ANNEXED AREAS. (a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" shall mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the

agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

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

(c) The utility commission shall grant single certification to the municipality. The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the utility commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e). The grant of single certification by the utility commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an

amount into the registry of the court or to the retail public utility under Subsection (f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final.

(c-1) The utility commission by rule shall require the municipality or franchised utility to submit a report to the utility commission verifying that the municipality or franchised utility has paid all required adequate and just compensation to the retail public utility as provided by Subsection (c).

(c-2) The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

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

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

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

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

franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

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

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

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

public utility is entitled to seek compensation for any damages sustained by it in accordance with Subsection (g) of this section.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate, shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, the value of the service facilities of the retail public utility located within the area in question, the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question, the amount of the retail public utility's contractual obligations allocable to the area in question, any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification, the impact on future revenues lost from existing customers, necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

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

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



pursuant to Subsection (f) of this section.

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

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

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

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

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

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

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

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of

the retail public utility in a proceeding hereunder.

(1) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the utility commission.

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

Added by Acts 1987, 70th Leg., ch. 583, Sec. 1, eff. Aug. 31, 1987.  
Amended by Acts 1989, 71st Leg., ch. 567, Sec. 32, eff. Sept. 1,

1989; Acts 1989, 71st Leg., ch. 926, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 814, Sec. 1 to 4, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1374, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1375, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. [2876](#)), Sec. 10, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.56, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. [567](#)), Sec. 56, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 226 (H.B. [837](#)), Sec. 3, eff. September 1, 2021.

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

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

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

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

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

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. 1145 (H.B. [2876](#)), Sec. 11, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.57, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. [567](#)), Sec. 57, eff. September 1, 2013.

Sec. 13.256. COUNTY FEE. (a) Notwithstanding any other provision of law, a county with a population of more than 2.8 million may not charge a water and sewer utility a fee for the privilege of installing or replacing a water or sewer line in the county's right-of-way.

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

Added by Acts 1995, 74th Leg., ch. 628, Sec. 1, eff. Sept. 1, 1995.

Sec. 13.257. NOTICE TO PURCHASERS. (a) In this section, "utility service provider" means a retail public utility other than a district subject to Section [49.452](#) of this code.

(b) If a person proposes to sell or convey real property located in a certificated service area of a utility service provider, the person must give to the purchaser written notice as prescribed by this section. An executory contract for the purchase

and sale of real property that has a performance period of more than six months is considered a sale of real property under this section.

(c) This section does not apply to:

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

(2) a transfer of title by deed in cancellation of indebtedness secured by a lien on the property conveyed;

(3) a transfer of title by reason of a will or probate proceeding;

(4) a transfer of title to or from a governmental entity;

(5) a transfer of title to property located within the corporate limits of a municipality that is served by a municipally owned utility;

(6) a transfer of title to property that receives water or sewer service from a utility service provider on the date the property is transferred;

(7) a transfer of title by a trustee in bankruptcy;

(8) a transfer of title by a mortgagee or beneficiary under a deed of trust who acquired the property:

(A) at a sale conducted under a power of sale conferred by a deed of trust or other contract lien;

(B) at a sale under a court judgment foreclosing a lien; or

(C) by a deed in lieu of foreclosure;

(9) a transfer of title from one co-owner to another co-owner;

(10) a transfer of title between spouses or to a person in the lineal line of consanguinity of the transferor; or

(11) a transfer of a mineral interest, leasehold interest, or security interest.

(d) The notice must be executed by the seller and read as follows: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges

that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property.

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

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Date

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Signature of Purchaser

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

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

- (1) failing to provide the notice required by this

section to a purchaser before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract if:

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

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

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

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

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

utility service provider.

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

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

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

(k) It is the express intent of this section that any seller, title insurance company, examining attorney, vendor of property and tax information, real estate broker, or lienholder, or



any agent, representative, or person acting on behalf of the seller, company, attorney, vendor, broker, or lienholder, may rely for the purpose of completing the notice required by this section on the accuracy of the map of the certificated service area of the utility service provider filed in the real property records by the utility service provider.

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

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

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

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

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

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

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

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

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

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

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

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

(r) A utility service provider shall:

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

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

(B) the Texas State Plane Coordinate System;

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

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

(2) submit to the utility commission evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county

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

Added by Acts 2001, 77th Leg., ch. 1068, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 12, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1004 (H.B. 4043), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.58, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 58, eff. September 1, 2013.

Sec. 13.258. UTILITY'S APPLICATION FOR AMENDMENT AND USE OF MUNICIPAL UTILITY DISTRICT'S CERTIFICATE UNDER CONTRACT.

(a) Notwithstanding any other provision of this chapter, a Class A utility may apply to the utility commission for an amendment of a certificate of convenience and necessity held by a municipal utility district to allow the utility to have the same rights and powers under the certificate as the municipal utility district.

(b) This section does not apply to a certificate of convenience and necessity held by a municipal utility district located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more.

(c) An application under this section must be accompanied by:

- (1) information identifying the applicant;
- (2) the identifying number of the certificate of convenience and necessity to be amended;
- (3) the written consent of the municipal utility

district that holds the certificate of convenience and necessity;

(4) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide services inside the certificated area and inside the boundaries of the municipal utility district; and

(5) a description of the proposed service area by:

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

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including roads, creeks, or railroad lines; or

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

(d) For an application under this section, the utility commission may not require any information other than the information required by this section.

(e) Not later than the 60th day after the date an applicant files an application for an amendment under this section, the utility commission shall review whether the application is complete. If the utility commission finds that the application is complete, the utility commission shall:

(1) find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public; and

(2) grant the application and amend the certificate.

(f) The utility commission's decision under this section becomes final after reconsideration, if any, authorized by utility commission rule, and may not be appealed.

(g) The consent of a municipality is not required for the utility commission to amend a certificate as provided by Subsection (a) for an area that is in the municipality's extraterritorial jurisdiction.

(h) Sections [13.241\(d\)](#) and [13.245](#) do not apply to an application under this section.

(i) Chapter [2001](#), Government Code, does not apply to an

application for an amendment of a certificate of convenience and necessity under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 4, eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 11, eff. September 1, 2019.

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

Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system owned by an entity that is required by law to possess a certificate of public convenience and necessity or the effective date of a sale or acquisition of or merger or consolidation with such an entity, shall:

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

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

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

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

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

(e) Before the expiration of the 120-day notification

period, the utility commission shall notify all known parties to the transaction and the Office of Public Utility Counsel whether the utility commission will hold a public hearing to determine if the transaction will serve the public interest. The utility commission may hold a hearing if:

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

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

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

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

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

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

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

(f) Unless the utility commission holds a public hearing, the sale, acquisition, lease, or rental may be completed as proposed:

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

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

(g) If the utility commission decides to hold a hearing or if the utility or water supply or sewer service corporation fails to

make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the utility commission determines that the proposed transaction serves the public interest.

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

(i) This section does not apply to:

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

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

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 21, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 33, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 9, eff. Sept. 1, 1991; Acts

1995, 74th Leg., ch. 400, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.11, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.59, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 59, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 7, eff. September 1, 2015.

Sec. 13.3011. INITIAL RATES FOR CERTAIN WATER OR SEWER SYSTEMS AFTER PURCHASE OR ACQUISITION. (a) A person who files an application described by Section 13.301(a) for the purchase or acquisition of a water or sewer system may request that the regulatory authority with original jurisdiction over the rates for water or sewer service provided by the person to the customers of the system authorize the person to charge initial rates for the service that are:

(1) shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and

(2) in force for the other water or sewer system on the date the application described by Section 13.301(a) is filed.

(b) The regulatory authority may not require a person who makes a request under Subsection (a) to initiate a new rate proceeding to establish the initial rates for service the person will provide to the customers of the purchased or acquired system.

Added by Acts 2021, 87th Leg., R.S., Ch. 252 (H.B. 1484), Sec. 1, eff. September 1, 2021.

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

(b) The utility commission may require that a person



acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

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

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

(e) Unless the utility commission holds a public hearing, the purchase or acquisition may be completed as proposed:

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

(2) at any time after the utility commission notifies the person or utility that a hearing will not be held.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 34, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 10, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 6.12, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.60, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 60, eff. September 1, 2013.

Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding

directly or indirectly any stock of the utility unless the utility reports the transaction to the utility commission within 60 days after the date of the transaction.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 35, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.61, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 61, eff. September 1, 2013.

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

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301, but shall provide written notice to the utility commission and the commission before the 30th day preceding the date on which the foreclosure is completed.

(c) The financial institution may operate the utility for an interim period prescribed by utility commission rule before transferring or otherwise obtaining a certificate of convenience and necessity. A financial institution that operates a utility during an interim period under this subsection is subject to each utility commission rule to which the utility was subject and in the same manner.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 11, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 400, Sec. 8, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.62, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 62, eff. September 1, 2013.

Sec. 13.305. VOLUNTARY VALUATION OF ACQUIRED UTILITY OR FACILITIES. (a) In this section:

(1) "Acquiring utility" means a Class A or Class B utility that is acquiring a selling utility, or facilities of a selling utility, as the result of a voluntary arm's-length transaction.

(2) "Ratemaking rate base" means the dollar value of a selling utility that is incorporated into the rate base of the acquiring utility for postacquisition ratemaking purposes.

(3) "Selling utility" means a retail public utility that is being purchased by an acquiring utility, or is selling facilities to an acquiring utility, as the result of a voluntary arm's-length transaction.

(b) The utility commission shall maintain a list of experts qualified to conduct economic valuations of utilities for the purposes of this section.

(c) An acquiring utility and a selling utility may agree to determine by the following process the fair market value of the selling utility or the facilities to be sold, as applicable:

(1) the acquiring utility and the selling utility shall notify the utility commission of their intent to determine the fair market value under this section;

(2) not later than the 30th day after the date the utility commission receives notice under Subdivision (1), the utility commission shall select three utility valuation experts from the list maintained under Subsection (b);

(3) each utility valuation expert shall perform an appraisal in compliance with Uniform Standards of Professional Appraisal Practice, employing the cost, market, and income approaches, to determine the fair market value; and

(4) the three utility valuation experts selected under Subdivision (2) jointly shall retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility, or the facilities to be sold, as applicable, and each utility valuation

expert shall:

(A) incorporate the assessment into the appraisal under the cost approach required under Subdivision (3); and

(B) provide the completed appraisal to the acquiring utility and the selling utility in a reasonable and timely manner.

(d) A utility valuation expert described by Subsection (b) may not:

(1) derive any material financial benefit from the sale other than fees for services rendered; or

(2) be or have been within the year preceding the date the service contract is executed an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(e) A fee paid to a utility valuation expert may be included in the transaction and closing costs associated with the acquisition by the acquiring utility. A fee may not exceed the lesser of:

(1) five percent of the fair market value; or

(2) a fee amount approved by the utility commission.

(f) For the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) For an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. The ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F.

(h) If the acquiring utility and the selling utility use the process for establishing fair market value in Subsection (c), the acquiring utility shall submit as attachments to an application required under Section [13.301](#):

(1) copies of the three appraisals performed by the utility valuation experts under Subsection (c);

(2) the purchase price agreed to by the acquiring

utility and the selling utility;

(3) if applicable, the ratemaking rate base determined under Subsection (g);

(4) if applicable, the transaction and closing costs incurred by the acquiring utility that will be included in the utility's rate base; and

(5) if applicable, a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition.

(i) If the utility commission approves the application for acquisition under Section 13.301, the utility commission shall issue an order that includes:

(1) the ratemaking rate base of the selling utility as determined under Subsection (g); and

(2) any additional conditions for the acquisition the utility commission requires.

(j) A tariff submitted under Subsection (h)(5) shall remain in effect until the utility commission approves new rates as part of a rate base case proceeding.

(k) The original sources of funding for any part of the water or sewer assets of the selling utility are not relevant to determine the value of the selling utility's assets. The selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring utility's next rate base case proceeding.

(l) In this subsection, "allowance of funds used during construction" means an accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance the construction costs of an improvement to a selling utility's assets by an acquiring utility. An acquiring utility's postacquisition improvements shall accrue an allowance of funds used during construction after the date the cost was incurred until the earlier of:

(1) the fourth anniversary of the date the asset entered into service; or

(2) the inclusion of the asset in the acquiring utility's next rate base case.

(m) Depreciation on an acquiring utility's postacquisition improvements shall be deferred for book and ratemaking purposes. Added by Acts 2019, 86th Leg., R.S., Ch. 545 (H.B. 3542), Sec. 2, eff. September 1, 2019.

#### SUBCHAPTER I. RELATIONS WITH AFFILIATED INTERESTS

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The utility commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the utility commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.63, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 63, eff. September 1, 2013.

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The utility commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.64, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 64, eff. September 1, 2013.

Sec. 13.343. WHOLESALE WATER CONTRACTS BETWEEN CERTAIN AFFILIATES. (a) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

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

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

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

(1) the source of the groundwater is located in a priority groundwater management area; and

(2) a wholesale supply of surface water is available.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 10.07, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.65, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 65, eff. September 1, 2013.

#### SUBCHAPTER J. JUDICIAL REVIEW

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the utility commission or the commission is entitled to judicial review under the substantial evidence rule.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.66, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 66, eff. September 1, 2013.

Sec. 13.382. COSTS AND ATTORNEY'S FEES. (a) Any party

represented by counsel who alleges that existing rates are excessive or that rates prescribed by the utility commission are excessive and who is a prevailing party in proceedings for review of a utility commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the utility commission and the court. The amount of the attorney's fees shall be fixed by the court.

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 36, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.67, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 67, eff. September 1, 2013.

#### SUBCHAPTER K. VIOLATIONS AND ENFORCEMENT

##### Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE.

(a) If the utility commission or the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the utility commission or the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the utility commission or the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the utility commission or the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act



or to require compliance with this chapter or the rule or order.

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

(1) notify the utility's representative; and

(2) initiate enforcement action consistent with:

(A) this subchapter; and

(B) procedural rules adopted by the utility commission or the commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 37, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1010, Sec. 6.30, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.68, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 68, eff. September 1, 2013.

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a public utility, if the utility commission finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the utility commission, the utility commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the utility commission may impose an administrative penalty under Section 13.4151.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 20.01, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.69, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 69, eff. September 1, 2013.

Sec. 13.412. RECEIVERSHIP. (a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the utility commission or the commission that the owner is abandoning the system;
- (3) violates a final order of the utility commission or the commission;
- (4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission; or
- (5) violates a final judgment issued by a district court in a suit brought by the attorney general under:
  - (A) this chapter;
  - (B) Chapter 7; or
  - (C) Chapter 341, Health and Safety Code.

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

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

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

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

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

(f) For purposes of this section and Section [13.4132](#), abandonment may include but is not limited to:

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

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the utility commission or the commission or the utility's customers; and

(7) failure to provide the utility commission or the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section [64.021](#), Civil Practice and Remedies Code, a receiver appointed under this section may seek approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 678, Sec. 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, Sec. 6.13, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.70, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 70, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 117 (H.B. 294), Sec. 1, eff. September 1, 2017.

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

- (1) payment of fees to the receiver for his services;
- (2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and
- (3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the utility commission or the commission.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.71, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 71, eff. September 1, 2013.

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter, or noncompliance with an order issued under this chapter.

(b) While supervising a utility, the utility commission may require the utility to abide by conditions and requirements prescribed by the utility commission, including:

(1) management requirements;  
(2) additional reporting requirements;  
(3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and

(4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the utility commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the utility commission may require that the utility obtain approval from the utility commission before taking any action that may be restricted under Subsection (b). Any action or transaction which occurs without approval may be voided by the utility commission.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 13, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.72, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 72, eff. September 1, 2013.

Sec. 13.4132. OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. (a) The utility commission or the commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a utility commission or commission meeting, may authorize a willing person to temporarily manage and operate a utility if the utility:

(1) has discontinued or abandoned operations or the provision of services;

(2) has been or is being referred to the attorney general for the appointment of a receiver under Section 13.412; or

(3) provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to:

(A) provide system capacity that is greater than the required raw water or groundwater production rate or the

anticipated daily demand of the system;

(B) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(C) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

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

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

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

(d) This section does not affect the authority of the utility commission or the commission to pursue an enforcement claim against a utility or an affiliated interest.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 13, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.14, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.73, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 73, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 545 (H.B. 3542), Sec. 3, eff. September 1, 2019.

Sec. 13.4133. EMERGENCY RATE INCREASE IN CERTAIN CIRCUMSTANCES. (a) Notwithstanding the requirements of

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

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

(c) An emergency order may be issued under this section for a term not to exceed 15 months. The utility commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The utility commission shall require the utility to provide notice of the hearing to each customer. The additional revenues collected under an emergency rate increase are subject to refund if the utility commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.

Added by Acts 1991, 72nd Leg., ch. 678, Sec. 13, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.74, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 74, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 8, eff. September 1, 2015.

Sec. 13.414. PENALTY AGAINST RETAIL PUBLIC UTILITY OR AFFILIATED INTEREST. (a) Any retail public utility or affiliated interest that violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the utility commission or the commission or decree or judgment of a court is subject to a civil penalty of not less than \$100 nor more than \$5,000 for each violation.

(a-1) Notwithstanding Subsection (a), a retail public utility or affiliated interest that violates Section 13.151 is subject to a civil penalty of not less than \$100 nor more than \$50,000 for each violation.

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

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

(d) The utility commission by rule shall establish a classification system to be used by a court under this section for violations of Section 13.151 that includes a range of penalties that may be recovered for each class of violation based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(e) The classification system established under Subsection (d) shall provide that a penalty in an amount that exceeds \$5,000 may be recovered only if the violation is included in the highest class of violations in the classification system.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 38, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 14, eff. Sept. 1, 1991. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.75, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 75, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 31, eff.



June 8, 2021.

Sec. 13.415. PERSONAL PENALTY. Any person who wilfully and knowingly violates this chapter is guilty of a third degree felony. Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

Sec. 13.4151. ADMINISTRATIVE PENALTY. (a) If a person, affiliated interest, or entity subject to the jurisdiction of the utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section. The penalty may be in an amount not to exceed \$5,000 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

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

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

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

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

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

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

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the utility commission

or the executive director of the commission concludes that a violation has occurred, the utility commission or the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. The utility commission or the executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b), and shall analyze each factor for the benefit of the appropriate agency.

(d) Not later than the 10th day after the date on which the report is issued, the utility commission or the executive director of the commission shall give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person, affiliated interest, or retail public utility charged may give the appropriate agency written consent to the report described by Subsection (c), including the recommended penalty, or may make a written request for a hearing.

(f) If the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c) or fails to timely respond to the notice, the utility commission or the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report. If the utility commission or the commission assesses the penalty recommended by the report, the utility commission or the commission shall give written notice to the person, affiliated interest, or retail public utility charged of its decision.

(g) If the person, affiliated interest, or retail public utility charged requests or the utility commission or the commission orders a hearing, the appropriate agency shall call a

hearing and give notice of the hearing. As a result of the hearing, the appropriate agency by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the appropriate agency shall analyze each of the factors provided by Subsection (b).

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

(i) Within the 30-day period immediately following the day on which the utility commission's or commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person, affiliated interest, or retail public utility seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the appropriate agency for placement in an escrow account; or

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

(j) Failure to forward the money to or to post the bond with

the utility commission or the commission within the time provided by Subsection (i) constitutes a waiver of all legal rights to judicial review. If the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i), the appropriate agency or the executive director of that agency may forward the matter to the attorney general for enforcement.

(k) Judicial review of the order or decision of the utility commission or the commission assessing the penalty shall be under the substantial evidence rule and may be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

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

(m) Notwithstanding any other provision of law, the utility commission or the commission may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

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

Added by Acts 1987, 70th Leg., ch. 539, Sec. 22, eff. Sept. 1, 1987.  
Amended by Acts 1989, 71st Leg., ch. 567, Sec. 39, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 15, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.12, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.76, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 76, eff. September 1, 2013.

Sec. 13.416. PENALTIES CUMULATIVE. All penalties accruing

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

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 40, eff. Sept. 1, 1989.

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission or the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission or the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 41, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.77, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 77, eff. September 1, 2013.

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

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.31, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.78, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 78, eff. September 1, 2013.

Sec. 13.419. VENUE. Suits for injunction or penalties under this chapter may be brought in Travis County, in any county where this violation is alleged to have occurred, or in the county or residence of any defendant.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985.

#### SUBCHAPTER K-1. EMERGENCY ORDERS

Sec. 13.451. ISSUANCE OF EMERGENCY ORDER. (a) The utility commission may issue an emergency order authorized under this chapter after providing the notice and opportunity for a hearing that the utility commission considers practicable under the circumstances or without notice or opportunity for a hearing. If the utility commission considers the provision of notice and opportunity for a hearing practicable, the utility commission shall provide the notice not later than the 10th day before the date set for the hearing.

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

(1) receive applications and issue emergency orders under this subchapter; and

(2) authorize, in writing, a representative or representatives to act on the utility commission's executive director's behalf under this subchapter.

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

(d) A law under which the utility commission acts that requires notice of hearing or that prescribes procedures for the issuance of emergency orders does not apply to a hearing on an

emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. The utility commission shall give notice of the hearing as it determines is practicable under the circumstances.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

Sec. 13.452. APPLICATION FOR EMERGENCY ORDER. A person other than the utility commission or the staff of the utility commission who desires the issuance of an emergency order under this subchapter must submit a sworn written application to the utility commission. The application must:

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

(2) allege facts to support the findings required under this subchapter;

(3) estimate the dates on which the proposed order should begin and end;

(4) describe the action sought and the activity proposed to be allowed, mandated, or prohibited; and

(5) include any other statement, including who must sign the application for the order, and any information required by the utility commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

Sec. 13.453. NOTICE OF ISSUANCE. Notice of the issuance of an emergency order must be provided as required by utility commission rule.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

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

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

Sec. 13.455. TERM OF ORDER. An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

Added by Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 9, eff. September 1, 2015.

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



Sec. 13.501. DEFINITIONS. In this subchapter:

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

(1-a) "Condominium manager" or "manager of a condominium" means a condominium unit owners' association organized under Section 82.101, Property Code, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code.

(2) "Dwelling unit" means:

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

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

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

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

(5) "Owner" means the legal titleholder of an apartment house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation expressly identified in a lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

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

(7) "Multiple use facility" means commercial or

industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

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

(9) "Utility costs" or "utility service costs" means any amount charged to the owner by a retail public utility for water or wastewater service.

Amended by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.79, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 79, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. 873), Sec. 1, eff. June 1, 2017.

Sec. 13.502. SUBMETERING. (a) An apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may provide for submetering of each dwelling unit or rental unit for the measurement of the quantity of water, if any, consumed by the occupants of that unit.

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

(1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or

(2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.

(c) An owner of an apartment house on which construction begins after January 1, 2003, and which provides government

assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.

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

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the utility commission approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

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

Amended by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 873, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.80, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 80, eff. September 1, 2013.

Sec. 13.503. SUBMETERING RULES. (a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to

enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140.

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

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

(1) resides in a unit of an apartment house that has received an allocation of low income housing tax credits under

Subchapter DD, Chapter 2306, Government Code; or

(2) receives tenant-based voucher assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

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

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

(f) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

Amended by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 673, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 151 (S.B. 2126), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.81, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 81, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. 873), Sec. 2, eff. June 1, 2017.

Sec. 13.5031. NONSUBMETERING RULES. (a) Notwithstanding any other law, the utility commission shall adopt rules and

standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;

(2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;

(3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

(b) This section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating

to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989.

Amended by Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999;

Acts 2003, 78th Leg., ch. 673, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.82, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 82, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. 873), Sec. 3, eff. June 1, 2017.

Sec. 13.504. IMPROPER RENTAL RATE INCREASE. If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house, manufactured home rental community, or other multiple use facility has increased rental rates and the increase is attributable to increased costs of utilities, the owner, operator, or manager shall immediately reduce the rental rate by the amount of the increase and refund all of the increase that has previously been collected within the 90-day period.

Amended by Acts 1987, 70th Leg., ch. 539, Sec. 26, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999.

Sec. 13.505. RESTITUTION. (a) In this section, "overcharge" means the amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter.

(b) The utility commission has exclusive jurisdiction for violations under this subchapter.

(c) If an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use

facility owner violates a rule of the utility commission regarding utility costs, the person claiming the violation may file a complaint with the utility commission. The utility commission and State Office of Administrative Hearings shall establish an online and telephone formal complaint and hearing system through which a person may file a complaint under this subchapter and may appear remotely for a hearing before the utility commission or the State Office of Administrative Hearings. If the utility commission determines that the owner or condominium manager overcharged a complaining tenant for water or wastewater service from the retail public utility, the utility commission shall require the owner or condominium manager, as applicable, to repay the complaining tenant the amount overcharged.

(d) Nothing in this section limits or impairs the utility commission's enforcement authority under Subchapter K. The utility commission may assess an administrative penalty under Section [13.4151](#) for a violation of this chapter or of any rule adopted under this chapter.

Amended by Acts 1987, 70th Leg., ch. 539, Sec. 26, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 43, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 86, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. [1600](#)), Sec. 2.83, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. [567](#)), Sec. 83, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 389 (S.B. [873](#)), Sec. 4, eff. June 1, 2017.

Sec. 13.506. PLUMBING FIXTURES. (a) After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager must:

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



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

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

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

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

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

Added by Acts 2001, 77th Leg., ch. 873, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 5, eff. September 1, 2009.

#### SUBCHAPTER N. PRIVATIZATION CONTRACTS

Sec. 13.511. DEFINITIONS. In this subchapter:

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

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

(3) "Service provider" means any person or group of

persons who is a party to a privatization contract which thereby contracts to provide sewage treatment and disposal services to an eligible city.

Added by Acts 1987, 70th Leg., ch. 88, Sec. 1, eff. May 14, 1987.  
Renumbered from Sec. 13.501 and amended by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the utility commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

Added by Acts 1987, 70th Leg., ch. 88, Sec. 1, eff. May 14, 1987.  
Renumbered from Sec. 13.502 by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.84, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 84, eff. September 1, 2013.

Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the utility commission; provided, however, this provision shall not affect the application of this chapter to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any

person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of this chapter with respect to such other person or municipality.

Added by Acts 1987, 70th Leg., ch. 88, Sec. 1, eff. May 14, 1987.

Renumbered from Sec. 13.503 by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.85, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 85, eff. September 1, 2013.

Sec. 13.514. TERM AND PROVISIONS OF A PRIVATIZATION CONTRACT. A privatization contract may be for a term and contain provisions that the governing body of an eligible city determines are in the best interests of the eligible city, including provisions relating to allocation of liabilities, indemnification, and purchase of all or a portion of the facilities.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.

Sec. 13.515. PAYMENTS UNDER A PRIVATIZATION CONTRACT. Payments by an eligible city under a privatization contract shall, if so provided, constitute an operating expense of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system, except that any payment for purchase of the facilities is payable from a pledge and lien on the net revenues of the eligible city's sanitary sewer system or combined waterworks and sanitary sewer system.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 44, eff. Sept. 1, 1989.