

CHAPTER 795

S.B. No. 249

An Act relating to the organization, administration, powers, duties, jurisdiction, and continuation of the Texas Water Commission and the Texas Water Development Board; creating the River Authority Study Committee; relating to the transfer of water and sewer utility regulation to the Texas Water Commission from the Public Utility Commission of Texas; relating to certain powers and duties of the Railroad Commission of Texas and the Texas Department of Health; providing for fees and penalties; making appropriations; amending and augmenting the Texas Water Code; amending the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) by adding Section 8b and by amending Sections 2, 3, 4(b), (c), and (f)(2), 3(b) and (c), 5(a), (c), (d), and (f), 7, 8(a) and (b), 9, 10, 12(a), and 20; amending Section 131.139, Natural Resources Code; amending the Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes) by amending Sections 2, 3(c), (d), (e), and (g), 4, 5, 6(d) and (n), 9(c), 10, 11, 12, and 17; amending Chapter 197, Acts of the 66th Legislature, Regular Session, 1979 (Article 8751, Vernon's Texas Civil Statutes), by amending Sections 1(3), 3(b) and (g), 5(a) and (b), 8(a), 9(b), 10(c), and 12; and by repealing Section 6(d).

Be it enacted by the Legislature of the State of Texas:

PART 1. DEPARTMENT ORGANIZATION AND ADMINISTRATION

SECTION 1.001. Chapter 5, Water Code, is amended to read as follows:

CHAPTER 5. TEXAS WATER COMMISSION

[TEXAS DEPARTMENT OF WATER RESOURCES]

Sec. 5.001. DEFINITIONS. In this chapter:

(1) [~~“Department” means the Texas Department of Water Resources.~~

[~~2~~] “Board” means the Texas Water Development Board.

(2) [~~3~~] “Commission” means the Texas Water Commission.

(3) [~~4~~] “Executive director” means the executive director of the Texas [~~Department of] Water Commission [Resources].~~

Sec. 5.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the commission [~~department~~] and those incidental to the conduct of its business. The commission [~~department~~] has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

[Sections 5.003 to 5.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF THE TEXAS

[~~DEPARTMENT OF] WATER COMMISSION [RESOURCES]~~

Sec. 5.011. PURPOSE OF CHAPTER. *It is the purpose of this chapter to provide an organizational structure for the commission that will provide more efficient and effective administration of water in this state and to define the duties, responsibilities, authority, and functions of the commission and the executive director.*

Sec. 5.012. DECLARATION OF POLICY. *The commission [Texas Department of Water Resources] is the agency of the state given primary responsibility for implementing the [provisions of the] constitution and laws of this state relating to water. [To assure that fundamental safeguards of the constitution are enjoyed by persons subject to the jurisdiction of the department, this title of the code provides for the formal separation of the legislative, executive, and judicial functions of the department and creates an office of public interest within the department.*

[~~Sec. 5.012. DEPARTMENT AS AGENCY OF THE STATE; DIVISION OF DEPARTMENT BY FUNCTIONS. (a) The Texas Department of Water Resources is an administrative agency of the state and is responsible for carrying out the legislative, executive, and judicial functions provided in this title and delegated to it by the constitution and other laws of this state.~~

[~~(b) With respect to the department, the terms “legislative,” “executive,” and “judicial” mean those functions of the department that most closely resemble the same functions of the three branches of the state government.~~]

Sec. 5.013. GENERAL JURISDICTION OF COMMISSION. (a) *The commission has general jurisdiction over:*

(1) *water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;*

(2) *continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;*

(3) *the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;*

(4) *the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification;*

(5) *the determination of the feasibility of certain federal projects;*

(6) *the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;*

(7) *conduct of the state's coastal oil and hazardous spill prevention and control program;*

(8) *the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;*

(9) *the administration of a portion of the state's injection well program;*

(10) *the administration of the state's programs involving underground water and water wells and drilled and mined shafts;*

(11) *the state's responsibilities relating to regional waste disposal;*

(12) *the responsibilities assigned to the commission by the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes);*

(13) *the administration of the national flood insurance program;*

(14) *administration of the state's water rate program under Chapter 13 of this code; and*

(15) *any other areas assigned to the commission by this code and other laws of this state.*

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

Sec. 5.014. [Sec. 5-0121-] APPLICATION OF SUNSET ACT. The Texas [Department of] Water Commission [Resources] is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless [; and unless] continued in existence as provided by that Act the commission [board] is abolished and this chapter expires effective September 1997 [1986].

[Sec. 5-013. LEGISLATIVE FUNCTIONS. The legislative functions of the department are vested in the Texas Water Development Board.

[Sec. 5-014. EXECUTIVE FUNCTIONS. (a) The executive functions of the department are vested in the executive director.

(b) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume the executive director's duties and functions.

[Sec. 5-015. JUDICIAL FUNCTIONS. The judicial functions of the department are vested in the Texas Water Commission.

[Sec. 5-016. GENERAL DUTIES AND RESPONSIBILITIES; INTERPRETATION. (a) The board, the executive director, and the commission shall carry out their respective powers and duties as provided by law and in a manner that respects the separation of governmental functions.

(b) The board, commission, or executive director shall act in the name of and for the department, and duly authorized acts of the board, commission, or executive director are to be considered as acts of the department.]

Sec. 5.015. [Sec. 5-017-] CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the commission and [board,] the executive director [; and the commission] to carry out their powers and duties in an efficient and effective [a] manner [that respects the separation of governmental functions].

[Sec. 5-018. PURPOSE OF ACT. Consistent with the objectives of the Joint Advisory Committee on Government Operations, the purpose of this Act is to assign the duties, responsibilities, and functions of the Texas Water Quality Board and Texas Water Rights Commission to a new department, and it is not the intention of this Act to make any substantive changes in the laws of the State of Texas.]

[Sections 5.016 [5.019] to 5.050 reserved for expansion]

[SUBCHAPTER C. ADMINISTRATIVE PROVISIONS]

[Sec. 5.051. FUNDS FROM OTHER STATE AGENCIES. Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the department any amount mutually agreed on by the department and the agency, subject to the approval of the governor.

[Sec. 5.052. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided in this code and subject to the specific limitations provided in this code, on application of any persons, the department shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board or commission. A certified copy with the seal of the department or commission as appropriate and the signature of the chairman of the board or commission or the executive director or chief clerk of the commission is admissible as evidence in any court or administrative proceeding.

(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the department, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3013, Revised Civil Statutes of Texas, 1925, as amended.

[Sec. 5.053. DOCUMENTS, ETC., STATE PROPERTY, OPEN FOR INSPECTION. All information, documents, and data collected by the department in the performance of its duties are the property of the state. Subject to the limitations in Section 26.134 of this code, all records are open to inspection by any person during regular office hours.

[Sec. 5.053. DOCUMENTS, ETC., STATE PROPERTY, OPEN FOR INSPECTION. All information, documents, and data collected by the department in the performance of its duties are the property of the state. Records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours, except that, if a showing satisfactory to the executive director is made by any person that such records, reports, data, or other information (other than effluent data) would divulge methods or processes entitled to protection as trade secrets, then the department shall consider such records, reports, data, or other information as confidential. Nothing in this chapter shall be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications. Any records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the State of Texas or of the United States with responsibilities in water pollution control, provided such disclosure or transmittal is made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity. The executive director shall not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

[Sec. 5.054. SEAL. The department shall have a seal bearing the words "Texas Department of Water Resources" encircling the oak and olive branches common to other official seals.

[Sec. 5.055. REPORTS TO GOVERNOR. The department shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board, commission, and executive director and their respective or joint recommendations for necessary and desirable legislation.

[[Sections 5.056 to 5.000 reserved for expansion]]

SUBCHAPTER C [D]. TEXAS WATER COMMISSION

[TEXAS WATER DEVELOPMENT BOARD]

Sec. 5.051 [5.001]. COMMISSION [STATE AGENCY]. The Texas Water Commission [Development Board] is created as an agency of the state [and shall exercise the legislative functions of the department as defined herein.

[Sec. 5.001]. The Texas Water Development Board is subject to the Texas Sunset Act, but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed.]

Sec. 5.052 [5.002]. MEMBERS OF THE COMMISSION [BOARD]; APPOINTMENT. (a) The commission [board] is composed of three [six] members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state [and has no conflict of interest prohibited by state or federal law].

(c) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 5.053. ELIGIBILITY FOR MEMBERSHIP. A person is not eligible to serve on the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

Sec. 5.054. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not maintain during the service on the commission the qualifications required for appointment to the commission;

(2) violates a prohibition established by Sections 5.059 and 5.060 of this code;

(3) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(4) is absent from more than one-half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year, except when the absence is excused by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a member of the commission existed.

(c) If a member of the commission has knowledge that a potential ground for removal exists, he shall notify the chairman of the commission of that ground. The chairman of the commission shall then notify the governor that a potential ground for removal exists.

Sec. 5.055 [5.003]. OFFICERS OF STATE; OATH. Each member of the commission [board] is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Sec. 5.056 [5.004]. TERMS OF OFFICE. (a) The members of the commission [board] hold office for staggered terms of six years, with the term [terms] of one member [two members] expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) A [No] person appointed to the commission [board] may not serve for more than two six-year terms.

Sec. 5.057. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.

Sec. 5.058. OFFICERS; MEETINGS. (a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

(b) The chairman may designate another commissioner to act for him in his absence.

(c) The chairman shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum.

Sec. 5.059. CONFLICT OF INTEREST. An officer, employee, or paid consultant of a trade association in an industry regulated by the commission may not be a member of the commission or employee of the commission, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in an industry regulated by the commission be a member of the commission or an employee of the commission grade 17 or over.

including exempt employees, according to the position classification schedule under the General Appropriations Act.

Sec. 5.060. **LOBBYIST PROHIBITION.** A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the commission may not serve as a member of the commission or act as the general counsel to the commission.

[Sec. 5.005. **BOARD OFFICERS.** (a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

(b) The members of the board shall elect a vice/chairman every two years. The board shall fill a vacancy in the office of vice/chairman for the remainder of the unexpired term.

[Sec. 5.006. **BOARD MEETINGS.** (a) The board shall meet at least once each month on a day and at a place within the state selected by it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.

(b) The chairman or in his absence the vice/chairman shall preside at all meetings of the board.

(c) A majority of the members constitute a quorum to transact business.

[Sec. 5.007. **COMPENSATION; EXPENSES.** A member is entitled to receive an amount as provided in the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.

[Sec. 5.008. **SEAL.** The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.]

[Sections 5.061 [5.009] to 5.100 [5.130] reserved for expansion]

SUBCHAPTER D [E]. GENERAL POWERS AND DUTIES OF THE COMMISSION [BOARD]

Sec. 5.101. **SCOPE OF SUBCHAPTER.** The powers and duties provided by this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of the code and other laws of this state.

Sec. 5.102. **GENERAL POWERS.** (a) The commission has the powers to perform any acts whether specifically authorized by this code or other law or implied by this code or other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws.

(b) The commission may call and hold hearings, receive evidence at hearings, administer oaths, 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 its jurisdiction under this code and other laws and rules, orders, permits, licenses, certificates, and other actions adopted, issued, or taken by the commission.

Sec. 5.103 [5.131]. **RULES.** (a) The commission [board] shall adopt [make] any rules necessary to carry out its [the] powers and duties under [the provisions of] this code and other laws of this state.

(b) The commission shall adopt reasonable procedural rules to be followed in a commission hearing. The executive director [and the commission] may recommend to the commission [board] for its consideration any rules that he considers [they consider] necessary.

(c) Rules shall be adopted in the manner provided by [in] the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 5.104. **MEMORANDA OF UNDERSTANDING.** (a) The commission and board by rule shall develop memoranda of understanding as necessary to clarify and provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission or board that is not expressly assigned to either the commission or board.

(b) The commission may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the commission and any other state agency.

Sec. 5.105 [5.132]. **GENERAL POLICY.** Except as otherwise specifically provided by this code, the [The] commission [board], by rule [in the rules], shall establish and approve all general policy of the commission [department].

Sec. 5.106 [5.133]. **BUDGET APPROVAL.** The commission [board] shall examine and approve all budget recommendations for the commission [department] that are to be

transmitted to the legislature. [~~The commission may provide as a supplement to those recommendations statements of particular concern to the commission.~~]

Sec. 5.107 [5-134]. **ADVISORY COUNCILS.** The *commission* [~~board~~] may create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that [~~which~~] the *commission* [~~board~~] may consider appropriate.

Sec. 5.108. **EXECUTIVE DIRECTOR** [5-135. **APPOINTMENT**]. (a) The *commission* [~~board~~] shall appoint an executive director [~~of the department~~] to serve at the will of the *commission* [~~board~~].

(b) The board shall exercise the powers of appointment which the Texas Water Rights Commission had the authority to exercise on August 30, 1977, except for those powers of appointment expressly provided to the Texas Water Rights Commission in Chapters 50 through 63 inclusive, of the Water Code, which are delegated to the commission.

Sec. 5.109. **CHIEF CLERK.** (a) *The commission shall appoint a chief clerk who shall serve at the will of the commission.*

(b) *The chief clerk shall assist the commission in carrying out its duties under this code.*

(c) *The chief clerk shall issue notice of public hearings held under the authority of the commission.*

Sec. 5.110. **GENERAL COUNSEL.** (a) *The commission shall appoint a general counsel who shall serve at the will of the commission.*

(b) *The general counsel is the chief legal officer for the commission.*

(c) *The general counsel must be an attorney licensed to practice law in this state.*

(d) *The general counsel shall perform the duties and may exercise the powers specifically authorized by this code or delegated to the general counsel by the commission.*

Sec. 5.111. **STANDARDS OF CONDUCT.** *The commission shall provide to its members, appointees, and employees as often as is necessary information regarding their qualifications under this code and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

Sec. 5.112. **PUBLIC TESTIMONY POLICY.** *The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the department.*

Sec. 5.113. **COMMISSION AND STAFF RESPONSIBILITY POLICY.** *The commission shall develop and implement policies that clearly separate the respective responsibilities of the commission and the staff.*

Sec. 5.114. **APPLICATIONS AND OTHER DOCUMENTS.** *Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided by this code.*

Sec. 5.115. **NOTICE OF APPLICATION.** (a) *At the time an application for a permit or license is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license.*

(b) *The commission shall adopt rules for the notice required by this section.*

(c) *The notice must state:*

(1) *the identifying number given the application by the commission;*

(2) *the type of permit or license sought under the application;*

(3) *the name and address of the applicant;*

(4) *the date on which the application was submitted; and*

(5) *a brief summary of the information included in the permit application.*

Sec. 5.116. **HEARINGS; RECESS.** *The commission may recess any hearing or examination from time to time and from place to place.*

Sec. 5.117. **MANDATORY ENFORCEMENT HEARING.** (a) *The executive director shall monitor compliance with all permits and licenses issued by the commission, and if the evidence available to the executive director through this monitoring process indicates that a permittee or licensee is in substantial noncompliance with his permit or license for a period of four months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance.*

(b) *On receiving a report from the executive director under Subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report has been in substantial noncompliance with his permit or license.*

(c) *At the conclusion of the hearing, the commission shall issue one of the following orders stating that:*

- (1) *no violation of the permit or license has occurred;*
 - (2) *a violation of the permit or license has occurred but has been corrected and no further action is necessary to protect the public interest;*
 - (3) *the executive director is authorized to enter into a compliance agreement with the permittee or licensee;*
 - (4) *a violation of the permit or license has occurred and an administrative penalty is assessed as provided by this code; or*
 - (5) *a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee.*
- (d) *A compliance agreement under Subsection (c)(3) of this section is not effective unless it is approved by the commission. If the commission determines at a hearing that a permittee or licensee has not complied with the terms of the compliance agreement, the commission may direct the executive director to institute enforcement proceedings.*

(e) *The executive director, on receiving an order from the commission directing institution of enforcement proceedings, shall take all necessary steps to have enforcement proceedings instituted.*

(f) *The commission may compel the attendance of the governing body or any other officer of any permittee or licensee at any hearing held under this section.*

Sec. 5.118. POWER TO ADMINISTER OATHS. *Each member of the commission, the chief clerk, or a hearings examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.*

Sec. 5.119. COMMISSION TO BE KNOWLEDGEABLE. *The commission shall be knowledgeable of the watercourses of the state and of the needs of the state concerning the use, storage, and conservation of water and of the need to maintain the quality of water in the state.*

Sec. 5.120. CONSERVATION AND QUALITY OF WATER. *The commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of water.*

[Sections 5.121 [~~5.126~~] to 5.170 reserved for expansion]

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR COMMISSION

Sec. 5.171. AUDIT. *The State Auditor shall audit the financial transactions of the commission at least once during each biennium.*

Sec. 5.172. FUNDS FROM OTHER STATE AGENCIES. *Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the commission any amount mutually agreed on by the commission and the agency, subject to the approval of the governor.*

Sec. 5.173. PUBLIC INFORMATION RELATING TO COMMISSION. *The commission shall prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and the appropriate state agencies.*

Sec. 5.174. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) *Except as otherwise specifically provided by this code and subject to the specific limitations provided by this code, on application of any person the commission shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the commission. A certified copy with the seal of the commission and the signature of the chairman of the commission or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.*

(b) *The commission shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the commission, except that the fees set by the commission for copies prepared by the commission may not exceed those prescribed in Article 3913, Revised Statutes.*

Sec. 5.175. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. *All information, documents, and data collected by the commission in the performance of its duties are the property of the state. Subject to the limitations of this code, all records are open to inspection by any person during regular office hours.*

Sec. 5.176. COMPLAINT FILE. *The commission shall keep an information file about each complaint filed with the commission relating to an entity regulated by the commission.*

Sec. 5.177. NOTICE OF COMPLAINT. *If a written complaint is filed with the commission relating to an entity regulated by the commission, the commission at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.*

Sec. 5.178. **REPORTS TO GOVERNOR.** (a) *The commission shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the commission and its recommendations for necessary and desirable legislation.*

(b) *The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.*

Sec. 5.179. **SEAL.** *The commission shall have a seal bearing the words "Texas Water Commission" encircling the oak and olive branches common to other official seals.*

[Sections 5.180 to 5.220 reserved for expansion]

SUBCHAPTER F. EXECUTIVE DIRECTOR

Sec. 5.221 ~~[5-174]~~. **GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR.** *The executive director shall manage the administrative affairs of the commission subject to this code and other laws and under the general supervision and direction of the commission [department and shall exercise the executive functions of the department, including the execution of the rules, orders, and decisions of the department].*

Sec. 5.222. **DEPUTY DIRECTORS.** (a) *The executive director may employ any deputy directors that he determines appropriate.*

(b) *The deputy directors are under the direction and supervision of the executive director.*

(c) *The powers and duties of the deputy directors shall be those powers and duties required by the commission and the executive director.*

Sec. 5.223 ~~[5-175]~~. **ADMINISTRATIVE ORGANIZATION OF COMMISSION [DEPARTMENT].** *Subject to approval of the commission, the [The] executive director may organize and reorganize the administrative sections and divisions of the commission [department] in a manner and in a form that will achieve the greatest efficiency and effectiveness.*

Sec. 5.224. **INFORMATION REQUEST TO BOARD.** (a) *With regard to any matter pending before the commission, the executive director may obtain from the board information relating to that matter.*

(b) *On receiving a request from the executive director, the board should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.*

Sec. 5.225. **CAREER LADDER PROGRAM.** *The executive director or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.*

Sec. 5.226. **MERIT PAY.** *The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this section.*

Sec. 5.227. **EQUAL EMPLOYMENT OPPORTUNITY POLICY.** (a) *The executive director or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:*

(1) *personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;*

(2) *a comprehensive analysis of the commission's work force that meets federal and state guidelines;*

(3) *procedures by which a determination can be made of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and*

(4) *reasonable methods to address appropriately areas of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance.*

(b) *The policy statement shall be filed with the governor's office before November 1, 1985, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. This report may be made individually or as a part of other biennial reports made to the legislature.*

Sec. 5.228 ~~[5-173]~~. **APPEARANCES AT HEARINGS.** *The position of and information developed by the commission [department] shall be presented by the executive director or his designated representative at hearings of the [board and the] commission and the [at] hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state. The executive director shall be named a party in hearings before the commission.*

Sec. 5.229 [5-174]. **CONTRACTS.** (a) The executive director, on behalf of the *commission* [department], may negotiate with and with the consent of the *commission* [board] enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the *commission* [department].

(b) The executive director, on behalf of the *commission* [department], may negotiate with and with the consent of the *commission* [board] enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the *commission* [department].

~~[(c) The executive director, on behalf of the department, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.]~~

Sec. 5.230 [5-175]. **ENFORCEMENT.** *On approval of the commission, the* [The] executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

Sec. 5.231 [5-176]. **TRAVEL EXPENSES.** The executive director *is* [shall be] entitled to receive actual and necessary travel expenses. Other employees of the *commission* [department] are entitled to receive travel expenses as provided in the General Appropriations Act.

Sec. 5.232 [5-177]. **EMPLOYEE MOVING EXPENSES.** If provided by [the] legislative appropriation, the *commission* [department] may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve [in] the best interest of the state.

Sec. 5.233 [5-178]. **GIFTS AND GRANTS.** The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code.

Sec. 5.234 [5-179]. **APPLICATIONS AND OTHER DOCUMENTS.** (a) An application, petition, or other document requiring action of the *commission* [department] shall be presented to the executive director and handled as provided by [in] this code and in the rules *adopted* by [of] the *commission* [department].

(b) After an application, petition, or other document is processed [requiring action by the *commission*], it shall be presented to the commission for *action as* [consideration of filing. If accepted for filing by the *commission*, if] required by law and rules of [s] the *commission* [shall set a hearing date and issue appropriate notice].

~~[(c) After an application is processed requiring action by the board, it shall be presented to the board for action as required by law and the rules.]~~

~~[Sec. 5-180. DEVELOPMENT FUND MANAGER. The executive director, with the approval of the board, shall appoint the development fund manager who shall perform all duties required of that position by this code and the executive director.]~~

~~[Sec. 5-181. PUBLIC INTEREST OFFICE. (a) There is created an office of public interest to insure that the department promotes the public's interest and is responsive to citizens. Public interest includes but is not limited to environmental quality and consumer protection.]~~

~~[(b) The office shall be headed by a public interest advocate appointed by the commission and the board. The executive director may submit the names and qualifications of candidates for public interest advocate to the board and commission. The board and commission shall meet jointly for the purpose of appointing or dismissing the public interest advocate by a majority vote of each body.]~~

~~[(c) The advocate shall represent the public interest and be a party to all proceedings before the department.]~~

~~[(d) The office shall be adequately staffed to carry out its function under this code.]~~

~~[(e) No ruling, decision, or other act of the board or the commission may be appealed by the advocate.]~~

Sec. 5.235 [5-182]. **FEES.** (a) The executive director shall charge and collect the fees prescribed by this section. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise.

(b) Except as specifically provided by this section, the fee for filing an application or petition is \$25 plus the cost of any required notice.

(c) The fee for filing a water permit application is \$75 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is \$100 plus the cost of required notice.

(e) The fee for filing a water district creation petition or conversion resolution is \$60 plus the cost of required notice.

(f) The fee for filing a bond issue application is \$100 plus the cost of required notice.

(g) The fee for recording an instrument in the office of the commission is \$1 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level, provided that no additional fee shall be charged for recreational use for any impoundments of water now or hereafter permitted by the state or exempted from permit by statute.

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution.

(k) A fee charged under this section for one use of water under a permit from the commission may not exceed \$5,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed \$1,000.

(l) The fees prescribed by Subsections (h) through (j) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds \$1,000, the applicant shall pay one-tenth of the fee when the application is filed, one-tenth within 30 days after notice is mailed to him that the permit is granted, and the balance before he begins to use water under the permit. If the applicant does not pay all of the amount owed before he begins to use water under the permit, his permit is annulled.

(m) When a permit is annulled, the matter *reverts* [~~shall revert~~] to the status of a pending, filed application and, *on* [~~upon~~] the payment of user fees as provided by this subsection together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

[Sections 5.236 to 5.270 reserved for expansion]

SUBCHAPTER G. PUBLIC INTEREST OFFICE

Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF PUBLIC INTEREST OFFICE. The office of public interest is created to ensure that the commission promotes the public's interest and is responsive to citizens. Public interest includes environmental quality and consumer protection.

Sec. 5.272. PUBLIC INTEREST ADVOCATE. The office shall be headed by a public interest advocate appointed by the commission. The executive director may submit the names and qualifications of candidates for public interest advocate to the commission.

Sec. 5.273. DUTIES OF ADVOCATE. The advocate shall represent the public interest and be a party to all proceedings before the commission.

Sec. 5.274. STAFF. The office shall be adequately staffed to carry out its functions under this code.

Sec. 5.275. APPEAL. A ruling, decision, or other act of the commission may not be appealed by the advocate.

[Sections 5.276 [5.183] to 5.310 [5.220] reserved for expansion]

[SUBCHAPTER G. TEXAS WATER COMMISSION

[~~Sec. 5.221. CREATION OF COMMISSION.~~ The Texas Water Commission is created as an agency of the state and shall exercise the judicial functions of the department.

[~~Sec. 5.221.~~ The Texas Water Commission is subject to the Texas Sunset Act, and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1985.

[~~Sec. 5.222. MEMBERS OF COMMISSION; APPOINTMENT.~~ (a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate.

[~~(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.~~

[~~Sec. 5.223. OFFICERS OF STATE; OATH.~~ Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

[~~Sec. 5.224. TERMS OF OFFICE.~~ (a) The members of the commission hold office for staggered terms of six years, with the terms of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) No person appointed to the commission may serve for more than two six/year terms.

[Sec. 5.225. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.

[Sec. 5.226. OFFICERS; MEETINGS. (a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

(b) The chairman may designate another commissioner to act for him in his absence.

(c) The chairman shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum.

[Sec. 5.227. CHIEF CLERK. (a) The commission shall employ a chief clerk who shall assist the commission in carrying out its duties under this code.

(b) The chief clerk shall issue notice of public hearings held under the authority of the commission.

[[Sections 5.228 to 5.260 reserved for expansion]]

[SUBCHAPTER H. GENERAL POWERS AND DUTIES OF THE COMMISSION

[Sec. 5.261. SCOPE OF SUBCHAPTER. The powers and duties enumerated in this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code.

[Sec. 5.262. RULES. (a) The commission shall adopt reasonable procedural rules to be followed in a commission hearing.

(b) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252/13a, Vernon's Texas Civil Statutes).

[Sec. 5.263. APPLICATIONS AND OTHER DOCUMENTS. Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided in this code.

[Sec. 5.264. HEARINGS, RECESS, ETC. The commission may recess any hearing or examination from time to time and from place to place.

[Sec. 5.265. POWER TO ADMINISTER OATHS. Each member of the commission, the chief clerk, or a hearing examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

[Sec. 5.266. SEAL. The commission shall adopt an official seal.

[Sec. 5.267. COMMISSION TO BE KNOWLEDGEABLE. The commission shall be knowledgeable of the water courses of the state and of the needs of the state concerning the use, storage, and conservation of water and of the need to maintain the quality of water in the state.

[Sec. 5.268. CONSERVATION AND QUALITY OF WATER. The commission shall administer the law so as to promote the judicious use and the maximum conservation and protection of quality of water.

[[Sections 5.269 to 5.310 reserved for expansion]]

SUBCHAPTER H [H]. OFFICE OF HEARING EXAMINERS

Sec. 5.311. CREATION OF OFFICE. (a) The commission shall create [Within the commission there is created] an office of hearing examiners to assist the commission in carrying out its powers and duties under this code.

(b) The office of hearing examiners is independent of the [board, the] executive director [;] and the divisions of the commission [board] and is under the exclusive control of the commission.

Sec. 5.312. ORGANIZATION OF OFFICE OF HEARING EXAMINERS. (a) The office of hearing examiners shall be under the direction of the chief hearing examiner.

(b) The chief hearing examiner and all assistant hearing examiners employed in the office of hearing examiners shall be attorneys licensed to practice law in this state and shall be employed by the commission.

Sec. 5.313. DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to a hearing examiner the responsibility to hear any matter before the commission.

(b) A hearing examiner shall prepare for and hold any hearing as directed by the commission and shall report to the commission on the hearing in the manner provided by law.

[Sections 5.314 to 5.350 reserved for expansion]

SUBCHAPTER I [J]. JUDICIAL REVIEW

Sec. 5.351. JUDICIAL REVIEW OF ~~COMMISSION~~ [DEPARTMENT] ACTS. (a) A person affected by a ruling, order, decision, or other act of the ~~commission~~ [department] may file a petition to review, set aside, modify, or suspend the act of the ~~commission~~ [department].

(b) A person affected by a ruling, order, or decision of the ~~commission~~ [department] must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the ~~commission~~ [department] performed the act.

~~(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16 and Chapter 17 of this code are not subject to appeal.~~

Sec. 5.352. REMEDY FOR ~~COMMISSION OR EXECUTIVE DIRECTOR~~ [; ~~COMMISSION, OR BOARD~~] INACTION. A person affected by the failure of the ~~commission or the executive director~~ [; ~~commission, or board~~] to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the ~~commission or the executive director~~ [; ~~commission, or board~~] to show cause why it should not be directed by the court to take immediate action.

Sec. 5.353. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

Sec. 5.354. VENUE. A suit instituted under Section 5.351 or 5.352 of this code must be brought in a ~~the~~ district court in ~~of~~ Travis County.

Sec. 5.355. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the ~~commission~~ [department] is appealable as are other civil cases in which the district court has original jurisdiction.

Sec. 5.356. APPEAL BY EXECUTIVE DIRECTOR PRECLUDED. A ~~No~~ ruling, order, decision, or other act of the ~~board or the~~ commission may *not* be appealed by the executive director.

Sec. 5.357. LAW SUITS; CITATION. Law suits filed by and against the ~~board;~~ commission [;] or executive director shall be in the name of the ~~commission~~ [department]. In suits against the ~~department, board;~~ commission [;] or executive director, citation may be served on the executive director ~~or deputy director~~.

SECTION 1.002. Title 2, Water Code, is amended by adding Chapter 6 to read as follows:

CHAPTER 6. TEXAS WATER DEVELOPMENT BOARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Executive administrator" means the executive administrator of the board.
- (3) "Director of planning" means the director of planning of the board.
- (4) "Development fund manager" means the development fund manager of the board.
- (5) "Commission" means the Texas Water Commission.

Sec. 6.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the board and those incidental to the conduct of its business. The board has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

[Sections 6.003-6.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF THE TEXAS WATER DEVELOPMENT BOARD

Sec. 6.011. BOARD AS AGENCY OF STATE. The board is the state agency primarily responsible for water planning and for administering water financing for the state.

Sec. 6.012. GENERAL DUTIES AND RESPONSIBILITIES. (a) The board has general jurisdiction over:

(1) the development of a statewide water plan;

(2) the administration of the state's various water assistance and financing programs including those created by the constitution; and

(3) other areas specifically assigned to the board by this code or other law.

(b) The board has only those powers and duties previously delegated by law to the Texas Department of Water Resources that are specifically delegated to the board under this code and other laws of this state.

Sec. 6.013. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies that are subject to abolition September 1, 1997, under that Act are reviewed.

Sec. 6.014. CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the board and the executive administrator to carry out their powers and duties in an efficient and effective manner.

[Sections 6.015-6.050 reserved for expansion]

SUBCHAPTER C. TEXAS WATER DEVELOPMENT BOARD

Sec. 6.051. STATE AGENCY. The Texas Water Development Board is an agency of the state.

Sec. 6.052. MEMBERS OF THE BOARD; APPOINTMENT. (a) The board is composed of six members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state and has no conflict of interest prohibited by state or federal law.

(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 6.053. ELIGIBILITY FOR MEMBERSHIP. (a) Members of the board must be members of the general public.

(b) A person is not eligible for appointment to the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board.

Sec. 6.054. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during the service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Sections 6.057 and 6.058 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(c) If a board member has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of that ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.

Sec. 6.055. OFFICERS OF STATE; OATH. Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Sec. 6.056. TERMS OF OFFICE. (a) The members of the board hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) No person appointed to the board may serve for more than two six-year terms.

Sec. 6.057. CONFLICT OF INTEREST. An officer, employee, or paid consultant of a trade association in an industry regulated by the board may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in an industry regulated by the board be a member of the board or an employee of the board grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

Sec. 6.058. LOBBYIST PROHIBITION. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board may not serve as a member of the board or act as the general counsel to the board.

Sec. 6.059. BOARD OFFICERS. (a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

(b) The members of the board shall elect a vice-chairman every two years. The board shall fill a vacancy in the office of vice-chairman for the remainder of the unexpired term.

Sec. 6.060. BOARD MEETINGS. (a) The board shall meet at least once every other month on a day and at a place within the state selected by it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.

(b) The chairman or in his absence the vice-chairman shall preside at all meetings of the board.

(c) A majority of the members constitute a quorum to transact business.

Sec. 6.061. COMPENSATION; EXPENSES. A member is entitled to receive an amount as provided by the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.

[Sections 6.062-6.100 reserved for expansion]

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF THE BOARD

Sec. 6.101. RULES. (a) The board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of this state.

(b) The executive administrator may recommend to the board for its consideration rules that he considers necessary to carry out the board's powers and duties.

(c) Rules shall be adopted in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 6.1011. BUDGET APPROVAL. The board shall examine and approve budget recommendations for the board that are to be transmitted to the legislature.

Sec. 6.102. ADVISORY COUNCILS. The board may create and consult with any advisory councils that the board considers appropriate to carry out its powers and duties.

Sec. 6.103. EXECUTIVE ADMINISTRATOR. The board shall appoint a person to be the executive administrator to serve at the will of the board.

Sec. 6.104. MEMORANDA OF UNDERSTANDING. (a) The board and the commission by rule shall develop memoranda of understanding as necessary to provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the board or commission that is not expressly assigned to either the board or the commission.

(b) The board may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the board and any other state agency.

Sec. 6.105. PUBLIC TESTIMONY POLICY. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 6.106. STANDARDS OF CONDUCT. The board shall provide to its members, appointees, and employees as often as is necessary information regarding their qualifications under this code and their responsibilities under applicable laws relating to standards of conduct for state officers and employees.

[Sections 6.107-6.150 reserved for expansion]

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR THE BOARD

Sec. 6.151. AUDIT. The state auditor shall audit the financial transactions of the board at least once during each biennium.

Sec. 6.152. PUBLIC INFORMATION RELATING TO BOARD. The board shall prepare information of public interest describing the functions of the board and describing the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and the appropriate state agencies.

Sec. 6.153. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. All information, documents, and data collected by the board in the performance of its duties are the property of the state. Subject to the limitations in this code, all records are open to inspection by any person during regular office hours.

Sec. 6.154. COMPLAINT FILE. The board shall keep an information file about each complaint filed with the board relating to an entity regulated by the board.

Sec. 6.155. NOTICE OF COMPLAINT. If a written complaint is filed with the board relating to an entity regulated by the board, the board at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Sec. 6.156. REPORTS TO GOVERNOR. (a) The board shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board and its recommendations for necessary and desirable legislation.

(b) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

Sec. 6.157. SEAL. The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.

[Sections 6.158-6.180 reserved for expansion]

SUBCHAPTER F. EXECUTIVE ADMINISTRATOR

Sec. 6.181. GENERAL RESPONSIBILITIES. The executive administrator shall manage the administrative affairs of the board subject to this code and other laws and under the general supervision and direction of the board.

Sec. 6.182. APPOINTMENT OF CERTAIN PERSONS. The executive administrator, with the approval of the board, shall appoint a development fund manager, director of planning, and general counsel for the board.

(b) The development fund manager, director of planning, and general counsel shall perform the duties required for those positions by this code and may perform the powers and shall perform the duties required by the board or the executive administrator.

Sec. 6.183. EMPLOYMENT OF PERSONNEL. The executive administrator shall employ necessary personnel for the board.

Sec. 6.184. ADMINISTRATIVE ORGANIZATION. The executive administrator, with the approval of the board, may organize and reorganize the administrative sections and divisions of the board in a form and manner that will achieve the greatest efficiency and effectiveness.

Sec. 6.185. INFORMATION REQUEST TO COMMISSION. (a) With regard to any matter pending before the board, the executive administrator may obtain from the commission information relating to that matter.

(b) On receiving a request from the executive administrator, the commission should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.

Sec. 6.186. CAREER LADDER PROGRAM. The executive administrator or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

Sec. 6.187. MERIT PAY. The executive administrator or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this section.

Sec. 6.188. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive administrator or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;
- (2) a comprehensive analysis of the board's work force that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underutilization in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to address appropriately areas of significant underutilization in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance.

(b) The policy statement shall be filed with the governor's office before November 1, 1985, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. This report may be made individually or as a part of other biennial reports made to the legislature.

Sec. 6.189. **APPEARANCES AT HEARINGS.** The position of and information developed by the board may be presented by the executive administrator or his designated representative at hearings of the board and commission and at hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state. The board shall be named a party in any hearing before the commission in which the board requests party status. The board may appeal any ruling, decision, or other act of the commission.

Sec. 6.190. **CONTRACTS.** (a) The executive administrator, on behalf of the board, may negotiate with and, with the consent of the board, may enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the board.

(b) The executive administrator, on behalf of the board, may negotiate with and, with the consent of the board, may enter into contracts or other agreements with states and political subdivisions of this state or other entity for the purpose of carrying out the powers, duties, and responsibilities of the board.

(c) The executive administrator, on behalf of the board, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.

Sec. 6.191. **TRAVEL EXPENSES.** The executive administrator is entitled to receive actual and necessary travel expenses. Other employees of the board are entitled to receive travel expenses as provided by the General Appropriations Act.

Sec. 6.192. **GIFTS AND GRANTS.** The executive administrator may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties provided by this code.

Sec. 6.193. **EMPLOYEE MOVING EXPENSES.** If provided by legislative appropriation, the board may pay the costs of transporting and delivering household goods and effects of employees transferred by the executive administrator from one permanent station to another when, in the judgment of the executive administrator, the transfer will serve the best interest of the state.

Sec. 6.194. **APPLICATIONS AND OTHER DOCUMENTS.** (a) An application, petition, or other document requiring action of the board shall be presented to the executive administrator and handled as provided by this code and in the rules of the board.

(b) After an application, petition, or other document requiring action of the board is processed, it shall be presented to the board for action as required by law and the rules of the board.

Sec. 6.195. **NOTICE OF APPLICATION.** (a) At the time an application requiring action of the board is filed and is administratively complete, the board shall give notice of the application to any person who may be affected by the granting of the application.

(b) The board shall adopt rules for the notice required by this section.

(c) The notice must state:

- (1) the identifying number given the application by the board;
- (2) the name and address of the applicant;
- (3) the date on which the application was submitted; and
- (4) a brief summary of the information included in the application.

[Sections 6.196-6.240 reserved for expansion]

SUBCHAPTER G. JUDICIAL REVIEW

Sec. 6.241. **JUDICIAL REVIEW OF ACTS.** (a) A person affected by a ruling, order, decision, or other act of the board may file a petition to review, set aside, modify, or suspend the act of the board.

(b) A person affected by a ruling, order, or decision of the board must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the board performed the act.

(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16 and to Chapter 17 of this code are not subject to appeal.

Sec. 6.242. **REMEDY FOR BOARD OR EXECUTIVE ADMINISTRATOR INACTION.** A person affected by the failure of the board or the executive administrator to act in a reasonable time on an application or to perform any other duty with reasonable promptness may file a petition to compel the board or the executive administrator to show cause why it should not be directed by the court to take immediate action.

Sec. 6.243. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 6.241 or 6.242 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

Sec. 6.244. VENUE. A suit instituted under Section 6.241 or 6.242 of this code must be brought in a district court in Travis County.

Sec. 6.245. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the board or the executive administrator is appealable as are other civil cases in which the district court has original jurisdiction.

Sec. 6.246. APPEAL BY EXECUTIVE ADMINISTRATOR PRECLUDED. A ruling, order, decision, or other act of the board may not be appealed by the executive administrator.

Sec. 6.247. LAW SUITS; CITATION. Law suits filed by and against the board or the executive administrator shall be in the name of the board. In suits against the board or the executive administrator, citation may be served on the executive administrator.

SECTION 1.003. Sections 11.002, 11.004, and 11.031, Water Code, are amended to read as follows:

Sec. 11.002. DEFINITIONS. In this chapter and in Chapter 12 of this code:

(1) "Commission" means the Texas Water Commission.

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

(3) "Executive director" means the executive director of the Texas [Department of] Water Commission [Resources].

(4) [~~"Department"~~] means the Texas Department of Water Resources.

[~~(5)~~] "Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(5) [~~(6)~~] "Water right" means a right acquired under the laws of this state to impound, divert, or use state water.

(6) [~~(7)~~] "Appropriator" means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

Sec. 11.004. COMMISSION [DEPARTMENT] TO RECEIVE CERTIFIED COPIES OF JUDGMENTS, ETC. When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility or affecting any matter over which the commission [department] is given supervision by law, the clerk of the court shall immediately transmit to the commission [department] a certified copy of the judgment, decree, or order.

Sec. 11.031. ANNUAL REPORT. (a) Not later than March 1 of every year, every person who takes water during the preceding calendar year from a stream or reservoir shall submit a written report to the commission [department] on a form prescribed by the commission [department]. The report shall contain all information required by the commission [department] to aid in administering the water law and in making inventory of the state's water resources. However, with the exception of public utilities and political subdivisions which furnish water for municipal uses, no report is required of persons who take water solely for domestic or livestock purposes.

(b) A person who fails to file an annual report with the commission [department] as required by this section is liable to a penalty of \$25, plus \$1 per day for each day he fails to file the statement after March 1. However, the maximum penalty under this section is \$150. The state may sue to recover the penalty.

SECTION 1.004. Subsections (c) and (g), Section 11.035, Water Code, are amended to read as follows:

(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the commission [department] for the condemnation.

(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the commission [department] for the benefits. The commission may grant the application and fix the fees and charges to be paid by the applicant.

SECTION 1.005. Subsections (a) and (g), Section 11.041, Water Code, are amended to read as follows:

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

- (1) that he is entitled to receive or use the water;
- (2) that he is willing and able to pay a just and reasonable price for the water;
- (3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
- (4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

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

SECTION 1.006. Section 11.042, Water Code, is amended to read as follows:

Sec. 11.042. **DELIVERING WATER DOWN BANKS AND BEDS.** Under rules prescribed by the *commission* [~~board~~], a person, association of persons, corporation, or water improvement or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion plant of the appropriator. The *commission* [~~board~~] shall prescribe rules for this purpose.

SECTION 1.007. Subsections (b) and (c), Section 11.087, Water Code, are amended to read as follows:

(b) The *commission* [~~board~~] may make and enforce rules and orders to implement the provisions of this section, including rules and orders designed to:

- (1) establish an orderly system for water releases and diversions in order to protect vested rights and to avoid the loss of released water;
- (2) prescribe the time that releases of water may begin and end;
- (3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;
- (4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and
- (5) establish other requirements the *commission* [~~board~~] considers necessary to effectuate the purposes of this section.

(c) Orders made by the commission to effectuate its rules [~~the board's regulations~~] under this section need not be published, but the commission shall transmit a copy of every such order by certified mail to each diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water as shown by the records of the *commission* [~~department~~].

SECTION 1.008. Subsection (b), Section 11.122, Water Code, is amended to read as follows:

(b) The *commission* [~~board~~] shall adopt rules to effectuate the provisions of this section.

SECTION 1.009. Sections 11.126 and 11.129, Water Code, are amended to read as follows:

Sec. 11.126. **COMMISSION** [~~DEPARTMENT~~] **REQUIREMENTS.** (a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the executive director may require additional information as prescribed by this section.

(b) The executive director may require a continuous longitudinal profile, cross sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the executive director considers necessary or expedient.

(c) If the application proposes construction of a dam greater than six feet in height either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the executive director.

(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers, and a statement of the amount of its authorized capital stock and its paid-up capital stock.

(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

Sec. 11.129. REVIEW OF APPLICATION; AMENDMENT. The commission shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of the *commission* [board]. The commission may require amendment of the application, maps, or other materials to achieve necessary compliance.

SECTION 1.010. Subsection (a), Section 11.130, Water Code, is amended to read as follows:

(a) The executive director shall have all applications for appropriations recorded in a well-bound book kept for that purpose in the *commission* [department's] office.

SECTION 1.011. Subsection (b), Section 11.135, Water Code, is amended to read as follows:

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

- (1) the name of the person to whom the permit is issued;
- (2) the date the permit is issued;
- (3) the date the original application was filed;
- (4) the use or purpose for which the appropriation is to be made;
- (5) the amount or volume of water authorized to be appropriated for each purpose;
- (6) a general description of the source of supply from which the appropriation is proposed to be made;
- (7) the time within which construction or work must begin and the time within which it must be completed; and
- (8) any other information the *commission* [board] prescribes.

SECTION 1.012. Subsection (g), Section 11.138, Water Code, is amended to read as follows:

(g) The *commission* [board] may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed \$500.

SECTION 1.013. Subsection (d), Section 11.139, Water Code, is amended to read as follows:

(d) The *commission* [board] may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

SECTION 1.014. Subsections (b) and (f), Section 11.143, Water Code, are amended to read as follows:

(b) If the applicant elects to proceed under this section, he shall submit to the *commission* [department] a sworn application, on a form furnished by the *commission* [department], containing the following information:

- (1) the name and post-office address of the applicant;
- (2) the nature and purpose of the use and the amount of water to be used annually for each purpose;
- (3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;
- (4) the county in which the dam or reservoir is located;
- (5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;
- (6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the *commission* [department];
- (7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and
- (8) the approximate number of square miles in the drainage area above the dam or reservoir.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the *commission* [department] and whose diversion point is downstream from that described in the application.

SECTION 1.015. Sections 11.144 and 11.145, Water Code, are amended to read as follows:

Sec. 11.144. APPROVAL FOR ALTERATIONS. All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work on which a permit has been granted or a certified filing recorded. A detailed statement and plans for

alterations or changes shall be filed with the *commission* [department] and approved by the executive director before the alterations or changes are made. This section does not apply to the ordinary maintenance or emergency repair of the facility.

Sec. 11.145. **WHEN CONSTRUCTION MUST BEGIN.** (a) If a permit is for appropriation by direct diversion, construction of the proposed facilities shall begin within the time fixed by the commission, which shall not exceed two years after the date the permit is issued. The appropriator shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction. The *commission* [board] may establish fees, not to exceed \$1,000, for extending the time to begin construction of the proposed facilities.

(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The *commission* [board] may fix fees, not to exceed \$1,000, for extending the time to begin construction of reservoirs.

SECTION 1.016. Sections 11.174 and 11.179, Water Code, are amended to read as follows:

Sec. 11.174. **COMMISSION [DEPARTMENT] TO INITIATE PROCEEDINGS.** When the *commission* [department] finds that its records do not show that any water has been beneficially used under a permit, certified filing, or certificate of adjudication during the past 10 years, the executive director shall initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication.

Sec. 11.179. **COMMISSION [DEPARTMENT] MAY INITIATE PROCEEDINGS.** When the *commission* [department] finds that its records do not show proof that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.

SECTION 1.017. Subsection (a), Section 11.203, Water Code, is amended to read as follows:

(a) A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and when the well is completed shall transmit a copy of the record to the *commission* [department] by registered mail.

SECTION 1.018. Section 11.204, Water Code, is amended to read as follows:

Sec. 11.204. **REPORT OF NEW ARTESIAN WELL.** Within one year after an artesian well is drilled, the owner or operator shall transmit to the *commission* [department] a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use.

SECTION 1.019. Subsection (a), Section 11.207, Water Code, is amended to read as follows:

(a) Not later than March 1 of each year, a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use shall file a report to the *commission* [department] on a form supplied by the *commission* [department].

SECTION 1.020. Section 11.302, Water Code, is amended to read as follows:

Sec. 11.302. **DECLARATION OF POLICY.** The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the *commission* [department] of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

SECTION 1.021. Subsections (c) and (f), Section 11.303, Water Code, are amended to read as follows:

(c) On or before September 1, 1969, every person claiming a water right to which this section applies shall file with the *commission* [department] a statement setting forth:

- (1) the name and address of the claimant;
- (2) the location and the nature of the right claimed;
- (3) the stream or watercourse and the river basin in which the right is claimed;
- (4) the date of commencement of works;
- (5) the dates and volumes of use of water; and

(6) other information the *commission* [department] may require to show the nature and extent of the claim.

(f) The *commission* [department] shall prescribe forms for the sworn statements required by this section, but use of the *commission* [department] forms is not mandatory.

SECTION 1.022. Subsection (a), Section 11.305, Water Code, is amended to read as follows:

(a) Promptly after a petition is filed under Section 11.304 of this Code, the commission shall consider whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated. The executive director shall have an investigation made of the area involved in order to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the *commission* [department's] office.

SECTION 1.023. Subsections (a) and (c), Section 11.306, Water Code, are amended to read as follows:

(a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the *commission* [department]. The date shall not be less than 90 days after the date the notice is issued.

(c) The notice shall also be sent by first-class mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the *commission* [department].

SECTION 1.024. Section 11.307, Water Code, is amended to read as follows:

Sec. 11.307. **FILING OF SWORN CLAIMS.** (a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the *commission* [department] within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

- (1) the name and post-office address of the claimant;
- (2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;
- (3) the purpose of the use;
- (4) a description of works and irrigated land; and
- (5) all other information necessary to show the nature and extent of the claim.

(b) The *commission* [department] shall prescribe forms for claims, but use of the *commission* [department] forms is not mandatory.

SECTION 1.025. Subsection (b), Section 11.312, Water Code, is amended to read as follows:

(b) The commission shall also send notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the *commission* [department].

SECTION 1.026. Section 11.314, Water Code, is amended to read as follows:

Sec. 11.314. **HEARING ON CONTEST; NOTICE.** After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the *commission* [department]. The hearing shall be conducted as provided in Section 11.337 of this code.

SECTION 1.027. Section 11.325, Water Code, is amended to read as follows:

Sec. 11.325. **WATER DIVISIONS.** The *commission* [board] shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

SECTION 1.028. Subsections (a) and (c), Section 11.329, Water Code, are amended to read as follows:

(a) The *commission* [department] shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the *commission* [department] for the compensation and expenses.

(c) The commission shall hold a public hearing to determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a public hearing, the commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The executive director may provide for payments in installments and shall specify the dates by which payments shall be made to the *commission [department]*.

SECTION 1.029. Sections 11.330-11.334, Water Code, are amended to read as follows:

Sec. 11.330. OUTLET FOR FREE PASSAGE OF WATER. The owner of any works for the diversion or storage of water shall maintain a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound. The *commission [board]* shall adopt rules, and the executive director shall enforce the rules, governing the type and location of the headgates or gates and the outlets to allow the free passage of water.

Sec. 11.331. MEASURING DEVICES. The *commission [board]*, by rule, may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights of the respective users.

Sec. 11.332. INSTALLATION OF FLUMES. The *commission [board]*, by rule, may require flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property.

Sec. 11.333. FAILURE TO COMPLY WITH COMMISSION [BOARD] RULES. If the owner of waterworks using state water refuses or neglects to comply with the rules adopted pursuant to Section 11.330, 11.331, or 11.332 of this code, the executive director, after 10 days notice or after a period of additional time that is reasonable under the circumstances, may direct the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the rules.

Sec. 11.334. SUIT AGAINST COMMISSION [DEPARTMENT] FOR INJURY. Any person who is injured by an act of the *commission [department]* under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it is shown that the *commission [department]* has failed to carry into effect the decree adjudicating the water right.

SECTION 1.030. Subsections (a) and (c), Section 11.335, Water Code, are amended to read as follows:

(a) If any area in which water rights of record in the office of the *commission [department]* have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

(c) An agreement to administer unadjudicated water rights shall be recorded in the offices of the *commission [department]* and of the county clerk of each county in which any of the works or lands affected by the agreement are located.

SECTION 1.031. Sections 12.011, 12.012, 12.014, and 12.017, Water Code, are amended to read as follows:

Sec. 12.011. PERMIT APPLICATIONS. The *commission [department]* shall receive, administer, and act on all applications for permits and permit amendments:

(1) to appropriate public water for beneficial use or storage; or

(2) to construct works for the impoundment, storage, diversion, or transportation of public water.

Sec. 12.012. EVALUATION OF OUTSTANDING PERMITS. The *commission [department]* shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

Sec. 12.014. USE OF COMMISSION [DEPARTMENT] SURVEYS; POLICY. The commission shall make use of surveys, studies, and investigations conducted by the staff of the *commission [department]* in order to ascertain the character of the principal requirements of the district regional division of the watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

Sec. 12.017. **POWER TO ENTER LAND.** Any member or employee of the *commission* [department] may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive director, assist the *commission* [department] in the discharge of its duties.

SECTION 1.032. Subsections (b), (c), (d), (e), and (f), Section 12.051, Water Code, are amended to read as follows:

(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the *commission* [department] for its study concerning the feasibility of the federal project.

(c) The *commission* [board] shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The *commission* [board] shall publish notice of the time, date, place, nature, and purpose of the public hearing once each week for two consecutive weeks before the date stated in the notice in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

(d) After hearing all the evidence both for and against approval of the federal project, the *commission* [board] shall enter its order approving or disapproving the feasibility of the federal project, and the order shall include the *commission's* [board's] reasons for approval or disapproval.

(e) In determining feasibility, the *commission* [board] shall consider, among other relevant factors:

- (1) the effect of the federal project on water users on the stream as certified by the commission;
- (2) the public interest to be served;
- (3) the development of damsites to the optimum potential for water conservation;
- (4) the integration of the federal project with other water conservation activities;
- (5) the protection of the state's interests in its water resources; and
- (6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

(f) The *commission* [board] shall forward to the governor a certified copy of its order. The *commission's* [board's] finding that the federal project is either feasible or not feasible is final, and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

SECTION 1.033. Subsections (a), (b), (d), and (f), SECTION 12.052, Water Code, are amended to read as follows:

(a) The *commission* [department] shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

(b) Rules and orders made by the *commission* [board] shall be made after proper notice and hearing as provided in the rules of the *commission* [board].

(d) If the commission determines that the existing condition of the dam is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the *commission* [department] to remedy or prevent the occurrence of the situation will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of a dam to repair, modify, maintain, dewater, or remove the dam which the commission determines is unsafe. The emergency order may be issued without notice to the dam owner or with notice the commission considers practicable under the circumstances. The notice does not have to comply with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) Nothing in this section or in rules or orders made by the *commission* [department] shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

SECTION 1.034. Subsection (a), Section 12.081, Water Code, is amended to read as follows:

(a) The powers and duties of all districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution are subject to the continuing right of supervision of the State of Texas by and through the *commission* [department] or its successor, and this supervision may include but is not limited to the authority to:

- (1) inquire into the competence, fitness, and reputation of the officers and directors of any district;
- (2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;

- (3) issue subpoenas for witnesses to carry out its authority under this subsection;
- (4) institute investigations and hearings using examiners appointed by the commission;
- and
- (5) issue rules necessary to supervise the districts.

SECTION 1.035. Subsections (b) and (c), Section 12.082, Water Code, are amended to read as follows:

(b) The *commission* [~~department~~] shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

(c) A district that wants to issue bonds for any purpose shall submit to the *commission* [~~department~~] a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

SECTION 1.036. Sections 12.112-12.114, Water Code, are amended to read as follows:

Sec. 12.112. FEES: EXEMPTIONS. The *commission* [~~board~~] and the Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

Sec. 12.113. DISPOSITION OF FEES, ETC. (a) The *commission* [~~department~~] shall immediately deposit in the State Treasury the fees and charges it collects.

(b) The *commission* [~~department~~] shall deposit all costs collected under Subchapter F, Chapter 11 of this code in the State Treasury to the credit of the water rights administration fund, from which the *commission* [~~department~~] shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

Sec. 12.114. DISPOSITION OF FEES PENDING DETERMINATION. The *commission* [~~department~~] shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the *commission* [~~department~~] shall return the fees to the applicant.

SECTION 1.037. Section 12.141, Water Code, is amended to read as follows:

Sec. 12.141. VIOLATIONS OF RULES, ORDERS, CERTIFIED FILINGS, PERMITS, CERTIFICATES OF ADJUDICATION. A person who wilfully violates any of the rules or orders adopted by the *commission* [~~board~~] or any of the terms and conditions contained in declarations of appropriations (*certified filings*), *permits*, *certificates of adjudication*, and orders of the commission is subject to a civil penalty of not more than \$1,000 for each act of violation and for each day that the violation continues to take place. An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

SECTION 1.038. Section 15.001, Water Code, is amended to read as follows:

Sec. 15.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Water Commission.
- (3) "Executive director" means the executive director of the Texas [~~Department of~~ Water Commission [~~Resources~~].
- (4) [~~"Department" means the Texas Department of Water Resources.~~
- (5) [~~Political subdivision~~] "Political subdivision" means a city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, or any interstate compact commission to which the state is a party.
- (6) [~~Project~~] "Project" means any undertaking or work to conserve, convey, and develop surface or subsurface water resources of the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide flood control and drainage, and to carry out other purposes defined by board rules.
- (7) [~~Fund~~] "Fund" means the water assistance fund.
- (8) [~~Loan fund~~] "Loan fund" means the water loan assistance fund.
- (9) [~~Conservation~~] "Conservation" as used herein shall include but not be limited to projects to develop water resources as well as projects to reduce consumption of water and projects to promote more efficient use of water.

SECTION 1.039. Subsections (a), (b), and (d), Section 15.005, Water Code, are amended to read as follows:

(a) On submission of a project application under this chapter, the *development fund manager* [~~executive director~~] shall determine if the application includes a project that will have flood control as one of its purposes and if the political subdivision submitting the application includes all of the watershed in which the project is to be located.

(b) If the *development fund manager* [~~executive director~~] finds that the application includes a project that has flood control as one of its purposes and that the watershed in which the project is located is partially located outside the political subdivision making the application, the *development fund manager* [~~executive director~~] shall require the applicant to submit a written memorandum of understanding relating to the management of the watershed in which the project is to be located.

(d) The board shall not consider any application for which a memorandum of understanding must be filed under this section until that memorandum of understanding is filed with the *development fund manager* [~~executive director~~].

SECTION 1.040. Sections 15.104, 15.110, 15.111, and 15.112, Water Code, are amended to read as follows:

Sec. 15.104. **CERTIFICATE OF COMMISSION OR APPROVAL BY COMMISSION.** (a) ~~The [Except as provided by Subsection (b) of this section, the]~~ board shall not deliver funds pursuant to an application for financial assistance from the loan fund until the political subdivision has furnished the board a resolution adopted by the commission certifying:

- (1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the project will provide; or
- (2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an applicant includes a proposal for a waste water treatment plant, ~~[the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but]~~ the board may not deliver funds for the waste water treatment plant until the applicant [~~political subdivision~~] has received a permit for construction and operation of the waste water treatment plant and [~~obtained written evidence of~~] approval of the plans and specifications [~~for the waste water treatment plant~~] from the commission [~~executive director~~].

Sec. 15.110. **INSPECTION OF PROJECTS.** (a) The board [~~department~~] may inspect the construction of a project any time to assure that:

- (1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and
- (2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board [~~department~~] does not subject the state to any civil liability.

Sec. 15.111. **ALTERATION OF PLANS.** After board approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the *development fund manager* [~~executive director~~] authorizes the alteration. *For a waste water treatment plant or other facility required to have commission approval of plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.*

Sec. 15.112. **CERTIFICATE OF APPROVAL.** The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to the [~~director's~~] plans as approved by the board or as altered with the *development fund manager's* [~~executive director's~~] approval;
- (2) failure to construct the works in accordance with sound engineering principles; or
- (3) failure to comply with any terms of the contract.

SECTION 1.041. Subsection (b), Section 15.325, Water Code, is amended to read as follows:

(b) The *executive administrator* [~~executive director~~] may authorize the release of water owned by the state from any facility in which the state has an interest under this subchapter for a period of not to exceed 72 hours from time of authorization to relieve an emergency condition that poses an imminent threat of flooding. The commission must approve any release of water that must be made beyond the 72-hour period provided by this subsection.

SECTION 1.042. Sections 15.329-15.331, Water Code, are amended to read as follows:

Sec. 15.329. **INSPECTION OF PROJECTS.** (a) The board [~~department~~] may inspect the construction of a project any time to assure that:

- (1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and
- (2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board [~~department~~] does not subject the state to any civil liability.

Sec. 15.330. ALTERATION OF PLANS. After board approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the development fund manager [~~executive director~~] authorizes the alteration. For a waste water treatment plant or other facility required to have commission approval of the plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Sec. 15.331. CERTIFICATE OF APPROVAL. The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to plans approved by the board or as altered with the development fund manager's [~~executive director's~~] approval;
- (2) failure to construct the works in accordance with sound engineering principles; or
- (3) failure to comply with any terms of the contract.

SECTION 1.043. Subsection (g), Section 15.405, Water Code, is amended to read as follows:

(g) The board shall [~~may~~] require that flood control plans developed under contracts entered into under this section be made available to the commission [~~department as provided by board rules~~].

SECTION 1.044. Section 16.001, Water Code, is amended to read as follows:

Sec. 16.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Water Commission.
- (3) "Chairman" means the chairman of the Texas Water Development Board.
- (4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(5) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(6) "Development fund manager" means the development fund manager of the Texas Water Development Board.

(7) [~~"Department"~~] means the Texas Department of Water Resources.

[(6)] "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(8) [(7)] "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(9) [(8)] "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(10) [(9)] "Waste" has the same meaning as provided in Section 26.001 of this code.

(11) [(10)] "Water development bonds" means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

(12) [(11)] "Lending rate" means an amount of interest calculated when one-half of one percent is added to the weighted average net effective interest rate on the three most recent issues of bonds issued under this chapter.

(13) [(12)] "Net effective interest rate" means the rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

(14) [(13)] "State facility" means a project in which the board has acquired an ownership interest.

(15) [(14)] "Acquisition of a state facility" means the act or series of actions by the board in making payment for a state facility.

SECTION 1.045. Sections 16.011-16.021, Water Code, are amended to read as follows:

Sec. 16.011. GENERAL RESPONSIBILITIES OF THE EXECUTIVE *ADMINISTRATOR* [~~DIRECTOR~~]. The executive *administrator* [~~director~~] shall determine the responsibilities of each administrative division of the *board* [~~department~~] and its staff in carrying out the authority, duties, and functions provided in this code.

Sec. 16.012. STUDIES, INVESTIGATIONS, SURVEYS. (a) The executive *administrator* [~~director~~] shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

(b) The executive *administrator* [~~director~~] shall:

- (1) determine suitable locations for future water facilities, including reservoir sites;
- (2) locate land best suited for irrigation;
- (3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;
- (4) examine and survey reservoir sites; and
- (5) investigate the effects of fresh water inflows upon the bays and estuaries of Texas.

(c) The executive *administrator* [~~director~~] shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

(d) In performing his duties under this section, the executive *administrator* [~~director~~] shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.

Sec. 16.013. ENGINEERING, HYDROLOGIC, AND GEOLOGIC FUNCTIONS. The executive *administrator* [~~director~~] shall advise and assist the board and the commission with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The executive *administrator* [~~director~~] shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.

Sec. 16.014. SILT LOAD OF STREAMS, ETC. The executive *administrator* [~~director~~] shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.

Sec. 16.015. STUDIES OF UNDERGROUND WATER SUPPLY. The executive *administrator* [~~director~~] may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state and may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists, and in determining the need, the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.

Sec. 16.016. POLLUTION OF RED RIVER TRIBUTARIES. Within the limits of available money and facilities, the executive *administrator* [~~director~~] shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.

Sec. 16.017. TOPOGRAPHIC AND GEOLOGIC MAPPING. The executive *administrator* [~~director~~] shall carry out the program for topographic and geologic mapping of the state.

Sec. 16.018. SOIL RESOURCE PLANNING. The executive *administrator* [~~director~~] may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the executive *administrator* [~~director~~].

Sec. 16.019. COOPERATIVE AGREEMENTS. With the approval of the board, the executive *administrator* [~~director~~] may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.

Sec. 16.020. MASTER PLANS OF DISTRICTS, ETC. The executive director shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies and shall make its recommendations to the [~~board or the~~] commission in all cases where approval of the [~~board or~~] commission is required by law or is requested by a district, authority, or agency.

Sec. 16.021. CENTRALIZED DATA BANK. The executive *administrator* [~~director~~] shall create a centralized data bank incorporating all hydrological data collected by state agencies.

SECTION 1.046. Subsections (a), (c), and (d), Section 16.051, Water Code, are amended to read as follows:

(a) The executive *administrator* [~~director~~] shall prepare, develop, and formulate a comprehensive state water plan.

(c) The executive *administrator* [~~director~~] shall be governed in his preparation of the plan by a regard for the public interest of the entire state. The executive *administrator* [~~director~~] shall direct his efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.

(d) The executive *administrator* [~~director~~] shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and to the effect of the plan on navigation.

SECTION 1.047. Sections 16.052-16.054, 16.057, 16.058, and 16.091, Water Code, are amended to read as follows:

Sec. 16.052. **INTERBASIN WATER TRANSFER.** The executive *administrator* [~~director~~] shall not prepare or formulate a plan which contemplates or results in the removal of surface water from the river basin of origin if the water supply involved will be required for reasonably foreseeable water supply requirements within the river basin of origin during the next ensuing 50-year period, except on a temporary, interim basis.

Sec. 16.053. **HEARING ON PRELIMINARY PLAN.** (a) After the executive *administrator* [~~director~~] completes his preliminary planning of the water resources development within a river basin, he shall hold a public hearing, after notice, at some central location within the river basin. If the proposed plan involves the transfer of water from one basin to another, the hearing shall be held at some location convenient to the areas affected.

(b) The executive *administrator* [~~director~~] shall present the proposed plan of development and hear evidence for and against the plan.

(c) After the hearing, the executive *administrator* [~~director~~] shall consider the effect the plan will have on the present and future development, economy, general welfare, and water requirements of the river basin or the areas affected.

Sec. 16.054. **HEARING ON COMPLETED STATE WATER PLAN.** When the executive *administrator* [~~director~~] has prepared and examined the completed preliminary plan, the board shall hold a public hearing on the plan to determine whether or not it gives adequate consideration to the protection of existing water rights in this state and whether or not it takes into account modes and procedures for the equitable adjustment of water rights affected by the plan. After the hearing, the board may formally adopt the state water plan. A majority vote is necessary for adoption.

Sec. 16.057. **FEDERAL ASSISTANCE IN FINANCING PLAN.** The executive *administrator* [~~director~~] may take all necessary action to qualify for federal assistance in financing the development and improvement of the plan.

Sec. 16.058. **STUDIES OF BAYS AND ESTUARIES.** The executive director shall carry out comprehensive studies of the effects of fresh water inflows upon the bays and estuaries of Texas. The studies shall include the development of methods of providing and maintaining the ecological environment thereof suitable to their living marine resources. The studies shall be completed and the results published by December 31, 1979. The General Land Office, the Parks and Wildlife Department, and the Texas Coastal and Marine Council are authorized and directed to assist and cooperate in all possible ways with the *commission* [~~department~~] in this undertaking.

Sec. 16.091. **DESIGNATION OF BOARD** [~~DEPARTMENT~~]. The *board* [~~department~~] is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.

SECTION 1.048. Subsections (a), (d), (e), and (g), Section 16.092, Water Code, are amended to read as follows:

(a) When a project is proposed for planning or development by the *board* [~~department~~], the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the executive *administrator* [~~director~~] for designation as the cooperating local sponsor of the project.

(d) The *board* [~~commission~~] shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the *commission* may require that the applicant complete the prescribed form.

(e) Before making any designation of local sponsorship, the *board* [~~commission~~] shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.

(g) After a public hearing, the *board* [~~commission~~], by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

SECTION 1.049. Sections 16.232, 16.233, and 16.235, Water Code, are amended to read as follows:

Sec. 16.232. LOCATION OF PROJECTS; REPORTS. The executive administrator [~~director~~] shall maintain files reflecting engineering reports, studies, drawings, and staff findings and recommendations pertaining to the location and effect of reclamation projects.

Sec. 16.233. COOPERATION WITH OTHER AGENCIES. In performing [~~his~~] functions that are a part of duties assigned to the commission or board by this code or other law, the executive director, with the approval of the commission, or the executive administrator, with the approval of the board, may confer with federal and state agencies and with political subdivisions and [~~with the approval of the board;~~] may execute cooperative agreements with them. The executive director or executive administrator may cancel any such agreement on 10 days notice to the other party.

Sec. 16.235. DISTRICTS TO FILE INFORMATION WITH COMMISSION [~~DEPARTMENT~~]. Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district shall file with the commission [~~department~~], on forms furnished by the commission [~~department~~], a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

SECTION 1.050. Subsections (d) and (e), Section 16.236, Water Code, are amended to read as follows:

(d) This section does not apply to:

(1) dams permitted by the commission or recognized as valid by final decree in any proceeding begun under Subchapter G, Chapter 11, of this code;

(2) dams authorized by Section 11.142 of this code;

(3) a levee or other improvement within the corporate limits of a city or town provided: (a) plans for the construction or maintenance or both must be approved by the city or town as a condition precedent to starting the project and (b) the city or town requires that such plans be in substantial compliance with rules and standards adopted by the commission [~~board~~]; or

(4) a levee or other improvement within the boundaries of any political subdivision which has qualified for the National Flood Insurance Program as authorized by the National Flood Insurance Act of 1968 (Title 42, U.S.C., Sections 4001-4127) provided: (a) plans for the construction or maintenance or both must be approved by the political subdivision which is participating in the national flood insurance program as a condition precedent to starting the project and (b) the political subdivision requires that such plans be in substantial compliance with rules and standards adopted by the commission [~~board~~];

(5) projects implementing soil and water conservation practices set forth in a conservation plan with a landowner or operator and approved by the governing board of a soil and water conservation district organized under the State Soil Conservation Law, as amended (Article 165a-4, Vernon's Texas Civil Statutes), provided that the governing board finds the practices do not significantly affect stream flooding conditions on, along, or near a state stream.

(e) On projects located within the corporate limits of a city or town or within the boundaries of any political subdivision which are exempt from the provisions of this section by Subdivision (3) or (4) of Subsection (d) above, any person whose property is located outside of the corporate limits of such city or town or of the boundaries of such a political subdivision and whose property is affected or potentially affected by the effect of the project on the floodwaters of the stream may appeal the decision of such political subdivision. The appeal shall be in writing and shall specify the grounds therefor and a copy shall be sent by certified mail to the project applicant and to the city or town or such political subdivision. The timely filing of such an appeal with the executive director suspends the decision of the city or town or political subdivision until a final decision is rendered by the commission [~~department~~]. The executive director shall review the complaint and investigate the facts surrounding the nature of the complaint. If the executive director finds that the complaint is frivolous or nonmeritorious or made solely for purposes of harassment or delay, then he shall dismiss the appeal. Otherwise, the executive director shall refer the appeal to the commission which shall after due notice hold a hearing to determine whether the project should be approved using the standards established by the commission [~~department~~] and shall hear such appeal de novo under the procedural rules established by the commission for other reclamation projects.

SECTION 1.051. Sections 16.314-16.318, Water Code, are amended to read as follows:

Sec. 16.314. **COOPERATION OF COMMISSION** [~~TEXAS DEPARTMENT OF WATER RESOURCES~~]. In recognition of the necessity for a coordinated effort at all levels of government, the *commission* [~~department~~] shall cooperate with the Federal Insurance Administrator of the United States Department of Housing and Urban Development in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

Sec. 16.315. **POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS.** All political subdivisions are hereby authorized to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, including but not limited to:

(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

(2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;

(3) assisting in minimizing damage caused by floods;

(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

(5) engaging in floodplain management and adopting enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the secretary, or whomever he designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Department of Housing and Urban Development for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the secretary's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the secretary when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Department of Housing and Urban Development or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the *commission* [~~board~~];

(12) satisfying criteria adopted and promulgated by the *commission* [~~department~~] pursuant to the National Flood Insurance Program; and

(13) adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use adopted by the secretary.

Sec. 16.316. **COORDINATION OF LOCAL, STATE, AND FEDERAL PROGRAMS BY COMMISSION** [~~DEPARTMENT~~]. (a) The *commission* [~~department~~] shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the *commission* [~~department~~] shall aid, advise, and cooperate with political subdivisions, the State Board of Insurance, and the United States Department of Housing and Urban Development when aid, advice, and cooperation are requested or deemed advisable by the board.

(c) The aforementioned aid may include but is not necessarily limited to:

(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas; and

(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones.

(d) On the basis of such studies and evaluations, the *commission* [~~department~~], to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

Sec. 16.317. COOPERATION OF STATE BOARD OF INSURANCE. Pursuant to the National Flood Insurance Program, the State Board of Insurance shall aid, advise, and cooperate with political subdivisions, the *commission* [~~department~~], and the United States Department of Housing and Urban Development when such aid, advice, and cooperation are requested or deemed advisable by the State Board of Insurance.

Sec. 16.318. RULES. Political subdivisions which qualify for the National Flood Insurance Program, the State Board of Insurance, and the *commission* [~~board~~] may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

SECTION 1.052. Section 17.001, Water Code, is amended to read as follows:

Sec. 17.001. DEFINITIONS. In this chapter:

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

(2) "Commission" means the Texas Water Commission.

(3) "*Executive administrator*" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(5) [(4)] "*Development fund manager*" means the development fund manager of the Texas Water Development Board.

(6) [~~"Department"~~] means Texas Department of Water Resources. (5) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(7) [(6)] "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants, including any system necessary to transport water from storage to points of distribution or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(8) [(7)] "Weighted average effective interest rate" means the rate of interest computed by dividing the total value of all coupons attached to the pertinent bonds issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond previously issued.

(9) [(8)] "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(10) [(9)] "Waste" has the same meaning as provided in Section 26.001 of this code.

(11) [(10)] "Water development bonds" means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

(12) [(11)] "Water quality enhancement bonds" means the Texas Water Development Bonds authorized by Section 49-d-1, as amended, of Article III of the Texas Constitution.

(13) [(12)] "Lending rate" means an amount of interest calculated by adding one-half percent to the weighted average of the cost of uncommitted funds secured from the sale of Texas Water Development Bonds as of the date of the latest sale of Texas Water Development Bonds.

(14) ~~[(13)]~~ "Net effective interest rate" means the rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

SECTION 1.053. Section 17.123 and Sections 17.135-17.139, Water Code, are amended to read as follows:

Sec. 17.123. CERTIFICATE OF COMMISSION OR APPROVAL BY COMMISSION. (a) ~~The [Except as provided in subsection (b) of this section, the]~~ board shall not deliver funds pursuant to an application for financial assistance until the political subdivision has furnished the board a resolution adopted by the commission certifying:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the project will provide; or

(2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an application includes a proposal for a waste water treatment plant, ~~[the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but]~~ the board may not deliver funds for the waste water treatment plant until the applicant ~~[political subdivision]~~ has obtained a permit for construction and operation of the waste water treatment plant and ~~[written evidence of]~~ approval of the plans and specifications for the ~~[waste water treatment]~~ plant from the commission ~~[executive director]~~.

Sec. 17.135. CONSTRUCTION CONTRACT REQUIREMENTS. The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

(1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) that each contractor awarded a construction contract furnish performance and payment bonds:

(A) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and

(B) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision; and

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the 10 percent retainage may be made by the political subdivision with approval of the development fund manager ~~[executive director]~~;

(5) that payment of the retainage remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the development fund manager ~~[executive director]~~ in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices; and

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

Sec. 17.136. FILING CONSTRUCTION CONTRACT. The political subdivision shall file with the board ~~[department]~~ a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

Sec. 17.137. INSPECTION OF PROJECTS. (a) The board ~~[department]~~ may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the *board* [~~department~~] does not subject the state to any civil liability.

Sec. 17.138. ALTERATION OF PLANS. After the *development fund manager* [~~executive director~~] approves of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the *development fund manager* [~~executive director~~] authorizes the alteration in accordance with rules of the board. *For a waste water treatment plant or other facility required to have commission approval of the plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.*

Sec. 17.139. CERTIFICATE OF APPROVAL. The *development fund manager* [~~executive director~~] may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to approved plans;
- (2) failure to construct the works in accordance with sound engineering principles; or
- (3) failure to comply with any term of the contract.

SECTION 1.054. Subsections (a), (c), (d), and (e), Section 17.277, Water Code, are amended to read as follows:

(a) After an application is received for financial assistance, the *development fund manager* [~~executive director~~] shall submit the application to the board together with comments and recommendations [~~of the development fund manager~~] concerning the best method of making financial assistance available.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided, the amount of any such assistance, and in consultation with and pursuant to agreement with the political subdivision, *and except as provided by Subsection (d) of this section*, the board shall determine the location, time, design, scope, and all other aspects of the construction of treatment works to be performed.

(d) The *commission* [~~executive director~~] shall review and approve plans and specifications for all treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended. *To avoid duplicate review and approval by two or more state agencies, review and approval of plans and specifications under this subsection by the Texas Department of Health is not required. [The Texas Department of Health shall review and approve plans in those cases where such assistance has not been requested except when notice of intention to apply for the financial assistance has been given to the executive director in which case the executive director shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the executive director and the Texas Department of Health].*

(e) *Except as provided by Subsection (d) of this section, the* [~~The~~] deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

SECTION 1.055. Sections 17.279-17.281 and 17.283, Water Code, are amended to read as follows:

Sec. 17.279. CONSTRUCTION CONTRACT REQUIREMENTS. The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of treatment works:

- (1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;
- (2) that each contractor awarded either a design/construct contract or construction contract furnish performance and payment bonds each of which shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices and each of which shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision;
- (3) that payment be made in partial payments as the work progresses;
- (4) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project but if the project is substantially complete, the 10 percent retainage requirement may be reduced by the political subdivision with approval of the *development fund manager* [~~executive director~~];
- (5) that payment of the retainage remaining due on completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the *development fund manager* [~~executive director~~] in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices; and

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

Sec. 17.280. **FILING CONSTRUCTION CONTRACT.** The political subdivision shall file with the *board* [~~department~~] a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

Sec. 17.281. **BOARD** [~~DEPARTMENT~~] **INSPECTION.** (a) The *board* [~~department~~] may inspect the construction of treatment works at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

(2) the treatment works are being constructed in accordance with sound construction principles.

(b) Inspection of treatment works by the *board* [~~department~~] does not subject the state to any civil liability.

Sec. 17.283. **CERTIFICATE OF APPROVAL.** The *development fund manager* [~~executive director~~] may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the treatment works according to approved plans;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

SECTION 1.056. Section 18.002, Water Code, is amended to read as follows:

Sec. 18.002. **DEFINITIONS.** As used in this chapter:

(1) "Commission" means the Texas Water Commission.

(2) ["Board" means the Texas Water Development Board.

[(3)] "Executive director" means the executive director of the Texas [Department of] Water Commission [Resources].

(3) [(4)] "Department" means the Texas Department of Water Resources.

[(5)] "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(4) [(6)] "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.

(5) [(7)] "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

SECTION 1.057. Sections 18.011-18.015, 18.017, and 18.019-18.022, Water Code, are amended to read as follows:

Sec. 18.011. **RULES** [//IN GENERAL]. The *commission* [board] may *adopt* [make] rules necessary to:

(1) exercise the powers and to perform *the* [their] duties under this chapter;

(2) *establish* [;

[Sec. 18.012. **RULES**//LICENSES AND PERMITS. In order to effectuate the purposes of this chapter, the *commission* may *make* rules *establishing*] procedures and conditions for the issuance of licenses and permits; and

(3) *establish* [;

[Sec. 18.013. **RULES**//SAFETY. The *board* may *make* rules *establishing*] standards and instructions to govern the carrying out of research or projects in weather modification and control that the *commission* [board] considers necessary or desirable to minimize danger to health or property.

Sec. 18.014. STUDIES; INVESTIGATIONS; HEARINGS. The *commission* [~~department~~] may make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

Sec. 18.015. ADVISORY COMMITTEES. The *commission* [~~board~~] may establish advisory committees to advise the department and to make recommendations to the department concerning legislation, policies, administration, research, and other matters.

Sec. 18.017. MATERIALS AND EQUIPMENT. The *commission* [~~department~~] may acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

Sec. 18.019. CONTRACTS, COOPERATIVE AGREEMENTS, ETC. (a) The *commission* [~~department~~] may cooperate with public or private agencies to promote the purposes of this chapter.

(b) The *commission* [~~department~~] may enter into cooperative agreements with the United States or any of its agencies, or with counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) The *commission* [~~department~~] may represent the state, counties, cities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

Sec. 18.020. PROMOTION OF RESEARCH AND DEVELOPMENT. (a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the *commission* [~~department~~] shall promote continuous research and development in:

- (1) the theory and development of methods of weather modification and control, including processes, materials, and devices related to these methods;
- (2) the utilization of weather modification and control for agricultural, industrial, commercial, and other purposes; and
- (3) the protection of life and property during research and operational activities.

(b) The executive director with approval of the *commission* [~~board~~] may conduct and may contract for research and development activities relating to the purposes of this section.

Sec. 18.021. GRANTS, GIFTS, ETC. Subject to any limitations imposed by law, the *commission* [~~department~~] may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the *commission* [~~department~~] may spend it for the administration of this chapter or may by grant, contract, or cooperative arrangement use the money to encourage research and development by a public or private agency.

Sec. 18.022. DISPOSITION OF LICENSE AND PERMIT FEES. The *commission* [~~department~~] shall deposit all license and permit fees in the State Treasury.

SECTION 1.058. Sections 18.051 and 18.052, Water Code, are amended to read as follows:

Sec. 18.051. LICENSE AND PERMIT REQUIRED. Except as provided by rule of the *commission* [~~board~~] under Section 18.052 of this code, no person may engage in activities for weather modification and control:

- (1) without a weather modification license and a weather modification permit issued by the commission; or
- (2) in violation of any term or condition of the license or the permit.

Sec. 18.052. EXEMPTIONS. The *commission* [~~board~~], to the extent it considers exemptions practical, shall provide by rule for exempting the following activities from the license and permit requirements of this chapter:

- (1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;
- (2) laboratory research and experiments;
- (3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and
- (4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

SECTION 1.059. Subsections (q) and (u), Section 18.0841, Water Code, are amended to read as follows:

(q) The *commission* [~~department~~] may monitor any program under such conditions as the *commission* [~~department~~] deems advisable.

(u) The *commission* [~~board~~] by rule shall define the term hail suppression as used in this section, using the most current scientifically accepted technological concepts.

SECTION 1.060. Section 18.091, Water Code, is amended to read as follows:

Sec. 18.091. RECORDS AND REPORTS. (a) A licensee shall keep a record of each operation conducted under permit, showing:

- (1) the method employed;
- (2) the type of equipment used;
- (3) the kind and amount of each material used;
- (4) the times and places the equipment is operated;

(5) the name and post-office address of each individual, other than the licensee, who participates or assists in the operation; and

- (6) other information required by the *commission* [~~department~~].

(b) The *commission* [~~department~~] shall require written reports covering each operation, whether it is exempt or conducted under a permit.

(c) At the time and in the manner required by the *commission* [~~department~~], a licensee shall submit a written report containing the information described in Subsection (a) of this section.

(d) All information on an operation shall be submitted to the *commission* [~~department~~] before it is released to the public.

(e) The reports and records in the custody of the *commission* [~~department~~] shall be kept open for public inspection.

SECTION 1.061. Subsection (b), Section 18.1211, Water Code, is amended to read as follows:

(b) After notice and hearing, the commission may issue a warning or, if a warning has already been issued, may suspend a permit up to a period of two years if it [~~the board~~] finds that a permittee, through carelessness, performed all or any part of a weather modification and control operation outside the boundaries of the permit area. The commission may suspend the permit up to a period of two years without prior issuance of a warning if the permittee, through gross carelessness, performed all or any part of a weather modification and control operation outside the boundaries of a permit area.

SECTION 1.062. Subsections (a) and (b), Section 18.172, Water Code, are amended to read as follows:

(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, license, permit, or order of the *commission* [~~or board~~], then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, license, permit, or order of the *commission* [~~or board~~], the district court shall grant the injunctive relief the facts may warrant.

SECTION 1.063. Section 26.001, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.001. DEFINITIONS. As used in this chapter:

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

(2) "Commission" means the Texas Water Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

[(4) "~~Department~~" means the Texas Department of Water Resources.]

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term "agricultural waste" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state. "Other waste" also includes tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland that may cause impairment of the quality of the water in the state.

(13) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(14) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(15) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(16) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(17) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution.

(18) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(19) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

SECTION 1.064. Section 26.001, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.001. **DEFINITIONS.** As used in this chapter:

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

(2) "Commission" means the Texas Water Commission.

(3) "*Executive administrator*" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas ~~Department of~~ Water Commission ~~Resources~~.

~~[(4) "Department" means the Texas Department of Water Resources.]~~

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term "agricultural waste" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(14) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(16) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(17) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(18) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(19) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(20) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(22) "Identified state supplement to an NPDES permit" means any part of a permit on which the board has entered a written designation to indicate that the board has adopted that part solely in order to carry out the board's duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

(23) "NPDES" means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act.

(24) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including:

(A) intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances;

(B) extensions, improvements, remodeling, additions, and alterations of the items in Paragraph (A) of this subdivision;

(C) elements essential to provide a reliable recycled supply such as standby treatment units and clear-well facilities;

(D) any works, including sites and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment;

(E) any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; and

(F) facilities to provide for the collection, control, and disposal of waste heat.

SECTION 1.065. Sections 26.011 and 26.012, Water Code, are amended to read as follows:

Sec. 26.011. **IN GENERAL.** Except as otherwise specifically provided, the *commission* [department] shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the *commission* [department] in the public interest. The *commission* [department] has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

Sec. 26.012. **STATE WATER QUALITY PLAN.** The executive director shall prepare and develop a general, comprehensive plan for the control of water quality in the state which shall be used as a flexible guide by the *commission* [department] when approved by the *commission* [board].

SECTION 1.066. Section 26.014, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.014. **POWER TO ENTER PROPERTY.** The members of the commission and employees and agents of the *commission* [department] are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

SECTION 1.067. Section 26.014, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.014. **POWER TO ENTER PROPERTY.** The members of the commission and employees and agents of the *commission* [department] are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the *commission* [department]. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

SECTION 1.068. Section 26.015, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.015. **POWER TO EXAMINE RECORDS.** The members of the commission and employees and agents of the *commission* [department] may examine during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste.

SECTION 1.069. Section 26.015, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.015. **POWER TO EXAMINE RECORDS.** The members of the commission and employees and agents of the *commission* [department] may examine and copy during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste or pollutants into any water in the state, or any other records required to be maintained.

SECTION 1.070. Sections 26.016-26.018, Water Code, are amended to read as follows:

Sec. 26.016. ENFORCEMENT PROCEEDINGS. The executive director may institute court proceedings to compel compliance with the provisions of this chapter or the rules, orders, permits, or other decisions of the *commission* [department].

Sec. 26.017. COOPERATION. The *commission* [department] shall:

(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions; and

(4) cooperate with the governments of the United States and other states and with official or unofficial agencies and organizations with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements, and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act, as amended, or other federal legislation having a similar purpose, the representation shall include an officer or employee of the *commission* [board].

Sec. 26.018. CONTRACTS, INSTRUMENTS. With the approval of the *commission* [board], the executive director may make contracts and execute instruments that are necessary or convenient to the exercise of the *commission's* [department's] powers or the performance of its duties.

SECTION 1.071. Subsection (c), Section 26.0191, Water Code, is amended to read as follows:

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary or emergency order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and the rules of the *commission* [department].

SECTION 1.072. Sections 26.023-26.026, Water Code, are amended to read as follows:

Sec. 26.023. WATER QUALITY STANDARDS. The *commission* [board] by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The *commission* [board] has the sole and exclusive authority to set water quality standards for all water in the state.

Sec. 26.024. HEARINGS ON STANDARDS; CONSULTATION. Before setting or amending water quality standards, the *commission* [board] shall:

(1) hold public hearings at which any person may appear and present evidence under oath, pertinent for consideration by the *commission* [board]; and

(2) consult with the executive administrator [director] to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

Sec. 26.025. HEARINGS ON STANDARDS; NOTICE TO WHOM. Notice of a hearing under Section 26.024 of this code shall be given to each of the following that the *commission* [board] believes may be affected:

(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

(2) the holders of rights to appropriate water from the water in question as shown by the records of the department; and

(3) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

Sec. 26.026. STANDARDS TO BE PUBLISHED. The *commission* [department] shall publish its water quality standards and amendments and shall make copies available to the public on written request.

SECTION 1.073. Subsection (b), Section 26.027, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the *commission* [department] containing all information reasonably required by the *commission* [department].

SECTION 1.074. Subsection (b), Section 26.027, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the *commission* [~~department~~] containing all information reasonably required by the *commission* [~~department~~].

SECTION 1.075. Subsection (d), Section 26.029, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the *commission* [~~department~~].

SECTION 1.076. Subsection (d), Section 26.029, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the *commission* [~~department~~].

SECTION 1.077. Subsections (a) through (d), Section 26.0291, Water Code, are amended to read as follows:

(a) An annual waste treatment inspection fee is imposed on each permittee for each waste discharge permit held by the permittee. The fee is to supplement any other funds available to pay expenses of the *commission* [~~department~~] in inspecting waste treatment facilities and enforcing the laws of the state, and the rules of the *commission* [~~Texas Department of Water Resources~~], governing waste discharge and waste treatment facilities. The fee for each year is imposed on each permit in effect during any part of the year.

(b) The *commission* [~~board~~], by rule, shall adopt a fee schedule for determining the amount of the fee to be charged. The amounts of the fees in such schedule shall be proportional to the average volume of discharge specified in the permit, beginning at \$100 for a zero discharge or small discharge, and a maximum of \$2,000 for the largest average volume of discharge in the state. The annual fee to be charged each permittee shall be that set by the fee schedule adopted by the *commission* [~~board~~].

(c) The fees collected under this section shall be deposited in a special fund in the state treasury to be known as the waste treatment facility inspection fund. Money in the fund shall be used to supplement any other funds available for paying expenses of the *commission* [~~department~~] in inspecting waste treatment facilities.

(d) The *commission* [~~board~~] may adopt rules necessary to administer this section.

SECTION 1.078. Subsections (b), (c), (d), (f), (g), (h), and (i), Section 26.031, Water Code, are amended to read as follows:

(b) Whenever it appears that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the *commission* [~~board~~] may hold a public hearing in or near the area to determine whether rules should be adopted controlling or prohibiting the installation or use of private sewage facilities in the area.

(c) Before the *commission* [~~board~~] adopts its rules, the executive director shall consult with the commissioner of the Texas Department of Health for recommendations concerning the impact of the use of private sewage facilities in the area on public health and present the recommendations at the hearing.

(d) If the *commission* [~~board~~] finds after the hearing that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the *commission* [~~board~~] may adopt rules as it may consider appropriate to abate or prevent pollution or injury to public health.

(f) The *commission* [~~board~~] may provide in the rules for a system of licensing of private sewage facilities in the area, including procedures for cancellation of a license for violation of this section, the license, or the rules of the *commission* [~~department~~]. The *commission* [~~board~~] may also provide in the system of licensing for periodic renewal of the licenses, but this may not be required more frequently than once a year.

(g) The *commission* [~~board~~] may delegate the licensing function and the administration of the licensing system to the executive director or to any local government whose boundaries include the area or which has been designated by the *commission* [~~board~~] under Sections 26.081 through 26.086 of this code as the agency to develop a regional waste disposal system which includes the area or to any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, which owns or operates a dam or reservoir project within the area regulated.

(h) The *commission* [~~board~~] also may prescribe and require the payment of reasonable license fees by an applicant for a license, including fees for periodic renewal of a license. The *commission* [~~board~~] may change the amount of the license fees from time to time. The amount of the fees shall be based on the reasonable cost of performing the licensing function and administering the licensing system, including, where applicable, costs of soil percolation and

other tests to determine the suitability of using a particular type or types of private sewage facilities in the area or at any location within the area, field inspections, travel, and other costs directly attributable to performing the licensing function and administering the licensing system.

(i) If the *commission* [~~board~~] or the executive director has the responsibility for performing the licensing function, the license fees shall be paid to the *commission* [~~department~~]. Those fees shall not be deposited in the General Revenue Fund of the state but shall be deposited in a special fund for use by the *commission* [~~department~~] in performing the licensing function and administering the licensing system, and the fees so deposited are hereby appropriated to the *commission* [~~department~~] to use for those purposes only.

SECTION 1.079. Section 26.032, Water Code, is amended to read as follows:

Sec. 26.032. **CONTROL BY COUNTIES.** (a) *Whenever it appears to the commissioners court of any county that the use of private sewage facilities in an area within the county is causing or may cause pollution or is injuring or may injure the public health, the county may proceed in the same manner and in accordance with the same procedures as the commission* [~~board~~] *to hold a public hearing and enter an order, resolution, or other rule as it may consider appropriate to abate or prevent pollution or injury to public health.*

(b) *The order, resolution, or other rule may provide the same restrictions and requirements as are authorized for an order of the commission* [~~board~~] *entered under this section.*

(c) *Before the order, resolution, or other rule becomes effective, the county shall submit it to the commission* [~~board~~] *and obtain the commission's* [~~board's~~] *written approval.*

(d) *In the event of any conflict within an area between rules adopted by the commission* [~~board~~] *and an order, resolution, or other rule adopted by a county under this section, the rules of the commission* [~~board~~] *shall take precedence.*

(e) *Where a system of licensing has been adopted by the commission* [~~board~~] *or the commissioners court of a county, no person may install or use private sewage facilities required to be licensed without obtaining a license.*

SECTION 1.080. Subsections (a), (b), and (c), Section 26.033, Water Code, are amended to read as follows:

(a) *After consultation with the Texas Department of Health* [~~Resources~~] *, the commission* [~~board~~] *shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the commission* [~~board~~] *may designate.*

(b) *The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the commission* [~~board~~] *on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and requirements which may be established by the State Department of Highways and Public Transportation.*

(c) *In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the commission* [~~board~~] *at locations which may be approved or established by the commission* [~~board~~] *, subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.*

SECTION 1.081. Sections 26.034 and 26.035, Water Code, are amended to read as follows:

Sec. 26.034. **APPROVAL OF DISPOSAL SYSTEM PLANS.** (a) *The commission* [~~executive director~~] *shall review and approve plans and specifications for treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended. To avoid duplicate review and approval by two or more state agencies, review and approval of plans and specifications under this subsection by the Texas Department of Health is not required. [The Texas Department of Health shall review and approve plans in those cases where such financial assistance or federal grant has not been requested except when notice of intention to apply for the financial assistance or federal grant has been given to the executive director in which case the executive director shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the executive director and the Texas Department of Health].*

(b) *Before beginning construction, every person who proposes to construct or materially alter the efficiency of any treatment works to which this section applies shall submit completed plans and specifications to the commission* [~~executive director~~] *for review and approval.*

(c) *The commission* [~~executive director~~] *shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the commission* [~~and the board respectively~~].

Sec. 26.035. FEDERAL GRANTS. The executive director with the approval of the *commission or the executive administrator with the approval of the board, as applicable under this code or other laws*, [board] may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The *commission or board* [department] may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter and may use the funds as prescribed by law or as provided by agreement.

SECTION 1.082. Section 26.036, Water Code, is amended to read as follows:

Sec. 26.036. WATER QUALITY MANAGEMENT PLANS. (a) The executive director shall develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the *commission* [board].

(b) The executive director may contract with local governments, regional planning commissions, planning agencies, other state agencies, colleges and universities in the state, and any other qualified and competent person to assist the *commission* [department] in developing and preparing, and from time to time revising, water quality management plans for areas designated by the *commission* [board].

(c) With funds provided for the purpose by legislative appropriation, the *commission* [board] may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the *commission* [board]. The period of time for which funding under this provision may be provided for developing and preparing or for revising a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

(d) Any person developing or revising a plan shall, during the course of the work, consult with the *commission* [department] and with local governments and other federal, state, and local governmental agencies which in the judgment of the *commission* [executive director] may be affected by or have a legitimate interest in the plan.

(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

SECTION 1.083. Subsections (a), (b), and (c), Section 26.037, Water Code, are amended to read as follows:

(a) After a water quality management plan has been prepared or significantly revised as authorized in Section 26.036 of this code, it shall be submitted to the *commission* [board] and to such local governments and other federal, state, and local governmental agencies as in the judgment of the *commission* [executive director] may be affected by or have a legitimate interest in the plan.

(b) After a reasonable period of time as determined by the *commission* [board] for the persons to whom the plan was submitted to review and consult on the plan, a public hearing shall be held on whether the plan should be approved or whether the plan should be modified in any way. Notice of the hearing shall be given to the person or persons who prepared or revised the plan and to the persons to whom the plan was submitted for review.

(c) After the public hearing if the *commission* [board] finds that the plan complies with the policy and purpose of this chapter and the rules and policies of the *commission* [board], it shall approve the plan. If the *commission* [board] does not so find, it may disapprove the plan, modify the plan as necessary so that it will comply, or return it for further development and later resubmission to the *commission* [board], in accordance with the procedure in Section 26.036 of this code.

SECTION 1.084. Section 26.038, Water Code, is amended to read as follows:

Sec. 26.038. FISCAL CONTROL ON WATER QUALITY MANAGEMENT PLAN-
NING. In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies as authorized in Subsection (c) of Section 26.036 of this code, the *commission* [board] shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law.

SECTION 1.085. Subsections (b) and (c), Section 26.039, Water Code, are amended to read as follows:

(b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the *commission* [~~department~~] as soon as possible and not later than 24 hours after the occurrence.

(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the *commission* [~~board~~] may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

SECTION 1.086. Sections 26.040 and 26.041, Water Code, are amended to read as follows:

Sec. 26.040. **CONTROL OF CERTAIN WASTE DISCHARGES BY RULE.** Whenever the *commission* [~~board~~] determines that the quality of water in an area is adversely affected or threatened by the combined effects of several relatively small-quantity discharges of wastes being made for which it is not practical to issue individual permits or that the general nature of a particular type of activity which produces a waste discharge is such that requiring individual permits is unnecessarily burdensome both to the waste discharger and the *commission* [~~department~~], the *commission* [~~board~~] may by rule regulate and set the requirements and conditions for the discharges of waste.

Sec. 26.041. **HEALTH HAZARDS.** The *commission* [~~department~~] may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

SECTION 1.087. Section 26.042, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.042. **MONITORING AND REPORTING.** The *commission* [~~board~~] may prescribe reasonable requirements for a person making waste discharges to monitor and report on his waste collection, treatment, and disposal activities. When in the judgment of the *commission* significant water quality management benefits will result or water quality management needs justify, the *commission* may also prescribe reasonable requirements for any person or persons making waste discharges to monitor and report on the quality of any water in the state which the *commission* has reason to believe may be materially affected by the waste discharges.

SECTION 1.088. Section 26.042, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.042. **MONITORING AND REPORTING.** (a) The *commission* [~~board~~] may prescribe reasonable requirements for a person making discharges of any waste or of any pollutant to monitor and report on his activities concerning collection, treatment, and disposal of the waste or pollutant.

(b) The *commission* [~~board~~] may, by regulation, order, permit, or otherwise require the owner or operator of any source of a discharge of pollutants into any water in the state or of any source which is an industrial user of a publicly owned treatment works to:

- (1) establish and maintain such records;
- (2) make such reports;
- (3) sample any discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the *commission* [~~board~~] shall prescribe; and
- (4) provide such other information relating to discharges of pollutants into any water in the state or to introductions of pollutants into publicly owned treatment works as the *commission* [~~board~~] may reasonably require.

(c) When in the judgment of the *commission* significant water quality management benefits will result or water quality management needs justify, the *commission* may also prescribe reasonable requirements for any person or persons making discharges of any waste or of any pollutant to monitor and report on the quality of any water in the state which the *commission* has reason to believe may be materially affected by the discharges.

SECTION 1.089. Subsections (b), (c), (d), and (f), Section 26.044, Water Code, are amended to read as follows:

(b) The *commission* [~~board~~] shall issue rules concerning the disposal of sewage from boats located or operated on inland fresh waters in this state. The rules of the *commission* [~~board~~] shall include [~~but not be limited to~~] provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including on-shore pump-out facilities, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each on-shore pump-out device.

(c) The *commission* [~~board~~] may delegate the administration and performance of the certification function to the executive director or to any other governmental entity. The

commission [board] may prescribe and require the payment, by applicants for certification, of reasonable fees based on the costs of administering and performing the certification function. All certification fees shall be paid to the entity performing the certification function. All fees collected by any state agency shall be deposited in a special fund for use by that agency in administering and performing the certification function and shall not be deposited in the General Revenue Fund of the state.

(d) Before issuing any rules under Subsection (b) of this section, the *commission* [board] or any person authorized by it under Section 26.021 of this code shall hold hearings *on those rules* [thereon] in Austin and in five other locations in the state in order to provide the best opportunity for all citizens of the state to appear and present evidence to the *commission* [board].

(f) Copies of each rule issued by the *commission* [board] under this section shall be filed in the offices of the *commission* [department] in Austin, [Texas,] in the office of the Secretary of State in Austin, and the office of the county clerk in each county in the state. The *commission* [board] shall provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the county judge of each county of the state a copy of the rules.

SECTION 1.090. Subsection (e), Section 26.045, Water Code, is amended to read as follows:

(e) The hearings required by this section and other acts of the commission in carrying out the provisions of this section shall be handled as provided in the rules of the *commission* [board].

SECTION 1.091. Section 26.046, Water Code, is amended to read as follows:

Sec. 26.046. **HEARINGS ON PROTECTION OF EDWARDS AQUIFER FROM POLLUTION.** (a) As used in this section, "Edwards Aquifer" means that portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively, and as defined in the most recent rules of the *commission* [board] for the protection of the quality of the potable underground water in those counties.

(b) Annually, the *commission* [board] shall hold a public hearing in Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays County, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the *commission* [board] should take to protect the Edwards Aquifer from pollution. Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the rules of the *commission* [department].

SECTION 1.092. Section 21.099, Water Code (effective on delegation of NPDES authority), is amended to read as follows:

Sec. 26.047 [21.099]. **PERMIT CONDITIONS AND PRETREATMENT STANDARDS CONCERNING PUBLICLY OWNED TREATMENT WORKS.** (a) The *commission* [board] shall impose as conditions in permits for the discharge of pollutants from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into such treatment works.

(b) The *commission* [board] is authorized to impose as conditions in permits for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder.

(c) The *commission* [board] is authorized to apply, and to enforce pursuant to Subchapter D [E] of this chapter [code], against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment works of pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works.

SECTION 1.093. Subsections (b) and (c), Section 26.081, Water Code, are amended to read as follows:

(b) Within any standard metropolitan statistical area in the state, the *commission* [department] is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 26.081 through 26.086 of this code.

(c) In those portions of the state which are not within a standard metropolitan statistical area, the *commission* [department] shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The *commission* [department] may not use the procedure specified in Sections 26.081 through 26.086 of this code in these areas to implement this policy. However, this does not affect or

diminish any authority which the *commission* [department] may otherwise have and exercise under other provisions of this chapter.

SECTION 1.094. Sections 26.082 and 26.083, Water Code, are amended to read as follows:
 Sec. 26.082. HEARING TO DEFINE AREA OF REGIONAL OR AREA-WIDE SYSTEMS. (a) Whenever it appears to the *commission* [board] that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the *commission* [board] may hold a public hearing in or near the area to determine whether the policy stated in Section 26.081 of this code should be implemented in that area.

(b) Notice of the hearing shall be given to the local governments which in the judgment of the *commission* [board] may be affected.

(c) If after the hearing the *commission* [board] finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the *commission* [board] may enter an order defining the area in which such a system or systems are necessary or desirable.

Sec. 26.083. HEARING TO DESIGNATE SYSTEMS TO SERVE THE AREA DEFINED; ORDER; ELECTION; ETC. (a) At the hearing held under Section 26.082 of this code or at a subsequent hearing held in or near an area defined under Section 26.082 of this code, the *commission* [board] may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the *commission* [board] may be affected.

(c) If after the hearing the *commission* [board] finds that there is an existing or proposed system or systems then capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of all or part of the area defined and that the owners or operators of the system or systems are agreeable to providing the services, the *commission* [board] may enter an order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

(d) After the *commission* [board] enters an order under Subsection (c) of this section and if the *commission* [board] receives a timely and sufficient request for an election as provided in Section 26.087 [1.206], the *commission* [board] shall designate a presiding judge for an election, to determine whether the proposed regional or area-wide system or systems operated by the designated regional entity should be created.

SECTION 1.095. Subsection (a), Section 26.084, Water Code, is amended to read as follows:

(a) After the *commission* [board] has entered an order as authorized in Section 26.083 of this code, the commission may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the commission may be affected, take any one or more of the following actions:

(1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area defined in an order entered under Section 26.082 of this code to use a regional or area-wide system designated under Section 26.083 of this code for the disposal of his waste;

(2) refuse to grant any permits for the discharge of waste or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 26.082 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 26.081 through 26.086 of this code; or

(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 26.082 of this code.

SECTION 1.096. Section 21.206, Water Code (Section 26.087, Vernon's Texas Water Code), is amended to read as follows:

Sec. 26.087 [21.206]. ELECTION FOR APPROVAL OF REGIONAL OR AREA-WIDE SYSTEM OR SYSTEMS. (a) After the *commission* [board], under Sections 26.082 [21.202] and 26.083 [21.203] of this code, enters an order: defining an area for a regional or area-wide system or systems; designating a regional entity to operate the regional or area-wide system or systems; and appointing a presiding judge for the election, an election shall be held within the boundaries of the proposed regional or area-wide system or systems to be operated by the designated regional entity upon the filing of a timely and sufficient request for an election except as provided in Subsection (i) of this section.

(b) Any person located within the boundaries of the proposed regional or area-wide system or systems requesting an election for the approval of the proposed regional or area-wide system or systems to be operated by the designated regional entity shall file a written request with the *commission [board]* within 30 days of the date the *commission [board]* enters an order under Section 26.083 of this code [21-203]. The request shall include a petition signed by 50 persons holding title to the land within the proposed regional or area-wide system or systems, as indicated by the county tax rolls.

(c) Notice of the election shall state the day and place or places for holding the election, and the proposition to be voted on. The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the regional or area-wide system or systems is to be located. The first publication of the notice shall be at least 14 days before the day set for the election. Notice of the election shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

(d) Absentee balloting in the election shall begin 10 days before the election and shall end as provided in the Texas Election Code. The ballots for the election shall be printed to provide for voting for or against the regional or area-wide system to be operated by the designated regional entity.

(e) Immediately after the election, the presiding judge shall make returns of the result to the executive director [of the board]. The executive director shall canvass the returns and report to the *commission [board]* his findings of the results at the earliest possible time.

(f) If a majority of the votes cast in the election favor the creation of the regional or area-wide system or systems operated by the designated regional entity, then the *commission [board]* shall declare the regional system is created and enter the results in its minutes. If a majority of the votes cast in the election are against the creation of the regional or area-wide system or systems operated by the designated regional entity, then the *commission [board]* shall declare that the regional system was defeated and enter the result in its minutes.

(g) The order canvassing the results of the confirmation election shall contain a description of the regional system's boundaries and shall be filed in the deed records of the county or counties in which the regional system is located.

(h) The legislature, through the General Appropriations Act, may provide funds for the conduct of elections required under this section. If no funds are appropriated for this purpose, the costs of conducting the election shall be assessed by the *commission [board]*.

(i) This subsection applies to regional or area-wide system or systems and regional entities which have been designated prior to the effective date of this Act. An election to approve creation of a regional or area-wide system or systems and the designation of a regional entity to operate those systems as provided in this section shall not be required for those regional systems or entities to which this subsection applies.

SECTION 1.097. Section 26.121, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.121. **UNAUTHORIZED DISCHARGES PROHIBITED.** (a) Except as authorized by a rule, permit, or order issued by the *commission [department]*, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the *commission [department]*.

SECTION 1.098. Section 26.121, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.121. **UNAUTHORIZED DISCHARGES PROHIBITED.** (a) Except as authorized by a rule, permit, or order issued by the *commission [department]*, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the *commission* [department].

(d) Except as authorized by a rule, permit, or order issued by the *commission* [department], no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.

(e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the *commission* [board].

SECTION 1.099. Section 26.124, Water Code, is amended to read as follows:

Sec. 26.124. ENFORCEMENT BY OTHERS. (a) Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the *commission* [department] has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the *commission* [department], may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both, as authorized in Subsection (a) of Section 26.123 of this code, against the person who committed or is committing or threatening to commit the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the *commission* [department] is a necessary and indispensable party.

(b) Whenever it appears that a violation or a threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the *commission* [department] has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the *commission* [department], may have a suit instituted in a district court for injunctive relief or civil penalties or both, as authorized in Section 26.123(a) of this code, against the person who committed or is committing or is threatening to commit the violation. The suit shall be brought in the name of the State of Texas through the county attorney or the district attorney, as appropriate, of the county where the defendant resides or in the county where the violation or threat of violation occurs.

SECTION 1.100. Subsection (b), Section 26.125, Water Code, is amended to read as follows:

(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, permit, or order of the *commission* [department], the court may grant the *commission* [department], the Parks and Wildlife Department, or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, after notice and hearing temporary injunctions, and permanent injunctions.

SECTION 1.101. Subsection (a), Section 26.126, Water Code, is amended to read as follows:

(a) All civil penalties recovered in suits instituted by the State of Texas under this chapter through the *commission* [department] or the Parks and Wildlife Department shall be paid to the General Revenue Fund of the State of Texas.

SECTION 1.102. Sections 26.127 and 26.130, Water Code, are amended to read as follows:

Sec. 26.127. **COMMISSION [DEPARTMENT] AS PRINCIPAL AUTHORITY.** The *commission* [department] is the principal authority in the state on matters relating to the quality of the water in the state. The executive director has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the *commission* [department].

Sec. 26.130. DUTY OF DEPARTMENT OF HEALTH [RESOURCES]. The Texas Department of Health [Resources] shall continue to apply the authority vested in it by Chapter 178, Acts of the 49th Legislature, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes), in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The Texas Department of Health [Resources] shall investigate and make recommendations to the *commission* [department] concerning the health aspects of matters related to the quality of the water in the state.

SECTION 1.1021. Subsection (a), Section 26.212, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the *commission* [department] or the Railroad Commission of Texas.

SECTION 1.1022. Subsections (a), (c), (d), and (e), Section 26.212, Water Code (effective on delegation of NPDES permit authority), are amended to read as follows:

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the *commission* [department] or the Railroad Commission of Texas.

(c) No person may wilfully or negligently cause, suffer, allow, or permit the discharge from a point source, of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter, or of any rule, regulation, permit, or other order of the *commission* [department].

(d) No person may knowingly make any false statement, representation, or certification in any application, notice, record, report, plan, or other document filed or required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the *commission* [department].

(e) No person may falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the *commission* [department].

SECTION 1.1023. Subsection (a), Section 26.214, Water Code, is amended to read as follows:

(a) A person who violates any rule entered by the *commission* [board] under Section 26.031 of this code or order adopted by a county under Section 26.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day that a violation occurs constitutes a separate offense.

SECTION 1.103. Sections 26.131, 26.135, and 26.171-26.173, Water Code, are amended to read as follows:

Sec. 26.131. DUTIES OF RAILROAD COMMISSION. The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources, and, except to the extent the activities are regulated by the Texas Department of Health under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), from activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore. The Railroad Commission of Texas may issue permits for the discharge of waste resulting from these activities, and discharge of waste into water in this state resulting from these activities shall meet the water quality standards established by the *commission* [board].

Sec. 26.135. EFFECT ON OTHER LAWS. (a) Nothing in this chapter affects the powers and duties of the *commission* [department] and the Railroad Commission of Texas with respect to injection wells as provided in Chapter 27 of this code.

(b) The *commission* [department] and the Water Well Drillers Board shall continue to exercise the authority granted to them in The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes).

Sec. 26.171. INSPECTION OF PUBLIC WATER. A local government may inspect the public water in its area and determine whether or not:

(1) the quality of the water meets the state water quality standards adopted by the *commission* [board];

- (2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and
- (3) persons who have permits are making discharges in compliance with the requirements of the permits.

Sec. 26.172. RECOMMENDATIONS TO COMMISSION [BOARD]. A local government may make written recommendations to the *commission* [board] as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

Sec. 26.173. POWER TO ENTER PROPERTY. (a) A local government has the same power as the *commission* [department] has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the *commission* [department].

(b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the *commission* [department] for its consideration.

SECTION 1.104. Subsections (a) and (b), Section 26.175, Water Code, are amended to read as follows:

(a) A local government may execute cooperative agreements with the *commission* [department] or other local governments:

(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

(b) When in the opinion of the executive director it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the *commission* [department] as authorized in Subsection (a) of this section, the executive director may assign and delegate to the local government during the period of the agreement such of the pertinent powers and functions vested in the *commission* [department] under this chapter as in the judgment of the executive director may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

SECTION 1.105. Subsection (b), Section 26.176, Water Code, is amended to read as follows:

(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as "users." The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

(1) the volume, type, character, and quality of the waste of each user or class of users;

(2) the techniques of treatment required;

(3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;

(4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the *commission* [department]; and

(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

SECTION 1.106. Subsection (b), Section 26.177, Water Code, is amended to read as follows:

(b) The water pollution control and abatement program of a city shall encompass the entire city and may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the *commission* [department];

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the *commission* [department], and whether they should be covered by a permit from the commission;

(4) in cooperation with the *commission* [department], a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings; and

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater.

SECTION 1.107. Subsections (a), (b), (d), (f), (h), and (j), Section 26.264, Water Code, are amended to read as follows:

(a) The *commission* [department] shall be the state's lead agency in spill response, shall conduct spill response for the state, and shall otherwise administer this subchapter. The *commission* [department] shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter. In the event of a discharge or spill and after reasonable effort to obtain entry rights from each property owner involved, if any, the executive director may enter affected property to carry out necessary spill response actions.

(b) The *commission* [board] may issue rules necessary and convenient to carry out the purposes of this subchapter.

(d) The executive director with the approval of the *commission* [board] may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

(f) The *commission* [department] and the State Department of Highways and Public Transportation, in cooperation with the governor, the United States Coast Guard, and the Environmental Protection Agency, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the State Department of Highways and Public Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

(1) the *commission* [department] and the State Department of Highways and Public Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

(2) personnel, equipment, and materials may be diverted only with the approval of the *commission* [department] and the State Department of Highways and Public Transportation, acting through their designated agents, or by action of the governor;

(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the fund, subject to reimbursement as provided in this subchapter; and

(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor, the Legislative Budget Board, and the state auditor, and shall be reviewed by the *commission* [board].

(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities, the *commission* [board] shall recognize the authority of the predesignated federal on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The executive director shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

(2) Nothing in this subchapter shall prevent the executive director from appointing a state-designated on-scene coordinator and acting independently if no on-scene coordinator is present and no action is being taken by an agency of the federal government.

(3) The *commission* [department] shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state.

(j) This subchapter is cumulative of all other powers of the *commission* [department].

SECTION 1.108. Subsection (c), Section 26.265, Water Code, is amended to read as follows:

(c) The executive director with the approval of the *commission* [board] may expend money in the fund only for the purpose of obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills, including restoration of land and aquatic resources held in trust or owned by the state.

SECTION 1.109. Subsections (b), (c), and (d), Section 26.266, Water Code, are amended to read as follows:

(b) In the event that the responsible party is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the *commission* [department] may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

(c) Any discharge or spill of a hazardous substance, the source of which is unknown, occurring in waters of the state or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter waters of the state may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the *commission's* [board's] approval, from the fund, subject to the authority of the *commission* [board] to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

(d) In any activity undertaken pursuant to this section, the *commission* [department] shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act, as amended, and with Section 26.264(h) of this code.

SECTION 1.110. Section 26.302, Water Code, is amended to read as follows:

Sec. 26.302. ADMINISTRATIVE PROVISIONS. (a) The *commission* [department] shall administer this subchapter.

(b) The *commission* [department] shall cooperate with cities and towns and with agencies, departments, and political subdivisions of this state and the United States and its agencies in implementing this subchapter and the environmental response law.

(c) The *commission* [board] may adopt rules necessary to carry out this subchapter.

SECTION 1.111. Subsections (a), (b) and (c), Section 26.303, Water Code, are amended to read as follows:

(a) The *commission* [department] may enter into contracts and cooperative agreements with the federal government to carry out removal and remedial action for a specific disposal facility as authorized by Section 104(c)(3) of the environmental response law or to carry out removal and remedial action with regard to a disposal facility under Section 104(d)(1) of the environmental response law.

(b) After notice and hearing, the *commission* [board] may authorize the executive director to enter into contracts and agreements on behalf of the *commission* [department] under Subsection (a) of this section pursuant to terms and conditions stated in the *commission's* [board's] order.

(c) If the *commission* [department] enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law, the *commission* [board] shall include in the contract or agreement terms and conditions:

(1) to assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

(2) to assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

(3) to assure payment by the state of:

(A) 10 percent of the costs of the remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

SECTION 1.112. Subsections (b) and (d), Section 26.304, Water Code, are amended to read as follows:

(b) The fund shall include money appropriated to it by the legislature and any other money received by the *commission* [department] from the federal government.

(d) Money in the fund may not be used for normal administrative and operating expenses of the *commission* ~~[department]~~.

SECTION 1.113. Sections 26.305 through 26.307, Water Code, are amended to read as follows:

Sec. 26.305. **CONSULTATION WITH FEDERAL GOVERNMENT.** Before entering into a contract or cooperative agreement under Section 26.303 of this code, the *commission* ~~[department]~~ shall consult and work with the federal government in determining the response that will be necessary under the contract or cooperative agreement with regard to the particular disposal facility.

Sec. 26.306. **STATE TO PROVIDE INFORMATION.** The *commission* ~~[department]~~ shall collect and shall file with the federal government any information required by the environmental response law and rules adopted under that law.

Sec. 26.307. **STATE RESPONSE.** The *commission* ~~[department]~~ may exercise any authority granted under this chapter if necessary to accomplish the purposes and requirements of the contract or cooperative agreement with the federal government.

SECTION 1.114. Sections 27.002, 27.011-27.015, and 27.017, Water Code, are amended to read as follows:

Sec. 27.002. **DEFINITIONS.** In this chapter:

(1) "Commission" means the Texas Water Commission.

(2) ~~["Board" means the Texas Water Development Board-~~

~~["Executive director" means the executive director of the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.~~

~~(3) ~~["Department" means the Texas Department of Water Resources-~~~~

~~["Railroad commission" means the Railroad Commission of Texas.~~

~~(4) ~~["Pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.~~~~

~~(5) ~~["Industrial and municipal waste" means any liquid, gaseous, solid, or other waste substance, or combination of these substances, which may cause or might reasonably be expected to cause pollution of fresh water and which result from:~~~~

~~(A) processes of industry, manufacturing, trade, or business;~~

~~(B) development or recovery of natural resources other than oil or gas; or~~

~~(C) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, and other municipal corporations.~~

~~(6) ~~["Oil and gas waste" means waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material.~~~~

~~(7) ~~["Fluid" means a material or substance that flows or moves in a liquid, gaseous, solid, semi-solid, sludge, or other form or state.~~~~

~~(8) ~~["Fresh water" means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.~~~~

~~(9) ~~["Casing" means material lining used to seal off strata at and below the earth's surface.~~~~

~~(10) ~~["Disposal well" means an injection well that is used for the injection of industrial and municipal waste or oil and gas waste.~~~~

~~(11) ~~["Injection well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well used for the injection of any other fluid; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.~~~~

~~(12) ~~["Extraction of minerals" means the use of an injection well for the development or recovery of natural resources other than resources subject to the jurisdiction of the railroad commission, and includes solution mining of minerals, in situ uranium mining, and mining of sulfur by the Frasch process, but does not include the solution mining of salt when leaching a cavern for the storage of hydrocarbons.~~~~

Sec. 27.011. PERMIT FROM COMMISSION. Unless the activity is subject to the jurisdiction of the railroad commission or authorized by a rule of the *commission* [department], no person may continue utilizing an injection well or begin drilling an injection well or converting an existing well into an injection well to dispose of industrial and municipal waste, to extract minerals, or to inject a fluid without first obtaining a permit from the commission.

Sec. 27.012. APPLICATION FOR PERMIT. The *commission* [department] shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Sec. 27.013. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge his duties under this chapter and the rules of the *commission* [board].

Sec. 27.014. APPLICATION FEE. With each application for a disposal well permit, the *commission* [department] shall collect a fee of \$25 for the benefit of the state.

Sec. 27.015. LETTER FROM RAILROAD COMMISSION. A person making application to the *commission* [department] for a disposal well permit under this chapter shall submit with the application a letter from the railroad commission stating that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.

Sec. 27.017. RECOMMENDATIONS FROM OTHER AGENCIES. The executive director shall submit to the Texas Department of Health, the Water Well Drillers Board, and to other persons which the *commission* [board] may designate, copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the *commission* [board] may prescribe.

SECTION 1.115. Subsection (b), Section 27.018, Water Code, is amended to read as follows:

(b) The *commission* [board] by rule shall provide for giving notice of the opportunity to request a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and affected persons. The *commission* [board] shall define "affected person" by rule.

SECTION 1.116. Sections 27.019 and 27.020, Water Code, are amended to read as follows:

Sec. 27.019. RULES, ETC. (a) The *commission* [department] shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter.

(b) Copies of any rules under this chapter proposed by the *commission* [board] shall before their adoption be sent to the railroad commission, [~~the executive director,~~] the Texas Department of Health, the Water Well Drillers Board, and any other persons the *commission* [board] may designate. Any agency or person to whom the copies of proposed rules are sent may submit comments and recommendations to the *commission* [board] and shall have reasonable time to do so as the *commission* [board] may prescribe.

Sec. 27.020. MINING OF SULFUR. The *commission* [department] is authorized to develop a regulatory program with respect to the injection of fluid associated with the mining of sulfur by the Frasch process in accordance with the provisions of this chapter. The *commission* [department] may not impose any requirements more stringent than those promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, 42 U.S.C. 300h et seq., as amended, unless the *commission* [department] determines that more stringent regulations are necessary to protect human health or the environment.

SECTION 1.117. Subsection (b), Section 27.034, Water Code, is amended to read as follows:

(b) Copies of any rules under this chapter proposed by the railroad commission shall, before their adoption, be sent to the *commission* [department], the Texas Department of Health, the Water Well Drillers Board, and any other persons the railroad commission may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the railroad commission and shall have reasonable time to do so as the railroad commission may prescribe.

SECTION 1.118. Subsection (f), Section 27.0511, Water Code, is amended to read as follows:

(f) No person may continue utilizing or begin utilizing industrial or municipal waste as an injection fluid for enhanced recovery purposes without first obtaining a permit from the *commission* [department].

SECTION 1.119. Section 27.052, Water Code, is amended to read as follows:

Sec. 27.052. COPIES OF PERMIT; FILING REQUIREMENTS. (a) The *commission* [department] shall furnish the railroad commission, the Texas Department of Health, and the

Water Well Drillers Board with a copy of each permit the commission issues. The railroad commission shall furnish the *commission* [department] with a copy of each permit the railroad commission issues and the executive director shall in turn forward copies to the Texas Department of Health and the Water Well Drillers Board.

(b) Before beginning injection operations, a person receiving a permit to inject industrial and municipal waste shall file a copy of the permit with the health authorities of the county, city, and town where the well is located.

SECTION 1.120. Sections 27.071 through 27.073, Water Code, are amended to read as follows:

Sec. 27.071. POWER TO ENTER PROPERTY. Members of the *commission* [board] and the railroad commission and employees of the *commission* [department] and the railroad commission may enter public or private property to inspect and investigate conditions relating to injection well or disposal well activities within their respective jurisdictions or to monitor compliance with a rule, permit, or other order of the *commission* [department] or railroad commission. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Sec. 27.072. POWER TO EXAMINE RECORDS. Members of the *commission* [board] and the railroad commission and employees of the *commission* [department] and railroad commission may examine and copy those records or memoranda of a business they are investigating as provided by Section 27.071 of this code that relate to the operation of an injection or disposal well, or any other records required to be maintained by law.

Sec. 27.073. FINANCIAL RESPONSIBILITY. A person to whom an injection well permit is issued may be required by the *commission* [department] or railroad commission to maintain a performance bond or other form of financial security to ensure that an abandoned well is properly plugged.

SECTION 1.121. Subsection (a), Section 27.101, Water Code, is amended to read as follows:

(a) A person who violates any provision of this chapter, any rule of the *commission* [board] or the railroad commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in any sum not exceeding \$5,000 for each day of noncompliance and for each act of noncompliance.

SECTION 1.1211. Subsection (a), Section 27.105, Water Code, is amended to read as follows:

(a) A person who knowingly or intentionally violates this chapter, a rule of the *commission* [board] or railroad commission, or a term, condition, or provision of a permit issued under this chapter is subject to a fine of not more than \$5,000 for each violation and for each day of violation.

SECTION 1.122. Section 28.001, Water Code, is amended to read as follows:

Sec. 28.001. DEFINITIONS. In this chapter:

(1) [~~“Department”~~] means the Texas Department of Water Resources.

[~~(2)~~] “Commission” means the Texas Water Commission.

(2) [~~(3)~~] “Executive Director” means the executive director of the Texas [Department of] Water Commission [Resources].

(3) [~~(4)~~] “Board” means the Texas Water Development Board.

[~~(5)~~] “Shaft” means any vertically oriented excavation, whether constructed by drilling or mining techniques, where the depth of the excavation is greater than its diameter, the excavation penetrates into or through the base of the uppermost water-bearing strata, and the primary purpose of the excavation is the transport of workers and materials to and from a destination, at depth, for purposes of geological studies, access to existing and planned subsurface mine workings, or for ventilation of those workings.

(4) [~~(6)~~] “Water” or “water in the state” means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of natural and artificial surface water that is inland or coastal, fresh or salt, and navigable or nonnavigable, and includes the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(5) [~~(7)~~] “Surface facilities” means the on-site above-ground appurtenances, structures, equipment, and other fixtures that are or will be used for storage or processing or in conjunction with the shaft operation.

SECTION 1.123. Sections 28.011, 28.022-28.025, and 28.027, Water Code, are amended to read as follows:

Sec. 28.011. **UNDERGROUND WATER: REGULATIONS.** The *commission* [~~depart~~
~~ment~~] shall make and enforce rules and regulations for conserving, protecting, preserving, and distributing underground, subterranean, and percolating water located in this state and shall do all other things necessary for these purposes.

Sec. 28.022. **APPLICATION FOR PERMIT.** The *commission* [~~department~~] shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Sec. 28.023. **INFORMATION REQUIRED OF APPLICANT.** An applicant shall furnish any information the *commission* [~~department~~] considers necessary to discharge its duties under this chapter and the rules of the *commission* [~~board~~].

Sec. 28.024. **APPLICATION FEE.** With each application for a shaft permit, the *commission* [~~department~~] shall collect a fee as set by the executive director to reasonably offset the costs to the *commission* [~~department~~] for processing the application. The fee may not be less than \$10,000.

Sec. 28.025. **LETTER FROM RAILROAD COMMISSION.** A person making application to the *commission* [~~department~~] for a shaft permit shall submit with the application a letter from the railroad commission stating that such shaft construction will not endanger or injure any oil or gas formation or significantly limit the potential for future recovery of or exploration for oil or gas.

Sec. 28.027. **RECOMMENDATIONS FROM OTHER AGENCIES.** The executive director shall submit to such state agencies and other persons that the *commission* [~~board~~] may designate copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the *commission* [~~board~~] may prescribe.

SECTION 1.124. Subsection (b), Section 28.028, Water Code, is amended to read as follows:

(b) The *commission* [~~board~~] by rule shall provide for giving notice of a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and interested persons.

SECTION 1.125. Section 28.030, Water Code, is amended to read as follows:

Sec. 28.030. **RULES, ETC.** (a) The *commission* [~~board~~] shall adopt rules reasonably required for the performance of the powers, duties, and functions of the *commission* [~~department~~] under this chapter.

(b) Such rules shall be published as proposed rules, as prescribed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), no later than 120 days after the enactment of this section and shall provide reasonable time for the *commission* [~~board~~] to receive comments and recommendations from interested agencies and the public before adoption by the *commission* [~~board~~].

(c) No shaft permit shall be issued by the commission pursuant to this chapter nor shall a permit hearing be held on a shaft application until the *commission* [~~board~~] has adopted rules for the issuance of such shaft permit.

(d) The [~~department or~~] *commission* may refuse to accept a shaft permit application or hold a shaft permit application hearing if the planned siting of the shaft is the subject of litigation.

SECTION 1.126. Subsection (a), Section 28.032, Water Code, is amended to read as follows:

(a) The *commission* [~~department~~] shall furnish the railroad commission with a copy of each shaft permit the commission issues.

SECTION 1.127. Sections 28.033-28.035, 28.038, 28.051, and 28.052, Water Code, are amended to read as follows:

Sec. 28.033. **RECORD OF STRATA.** (a) The commission shall require a person applying for a shaft permit to drill or have drilled a test hole on center or offset to the shaft and provide the following to the *commission* [~~department~~] and the railroad commission in the application:

- (1) a description of the lithology into or through the lower confining strata;
- (2) results of rock testing;
- (3) geophysical logs; and
- (4) other information that may be required by the *commission* [~~department~~].

(b) The commission shall require a person receiving a shaft permit to keep and furnish to the *commission* [~~department~~] and the railroad commission a complete and accurate record of the depth, thickness, and character of the different strata or rock units penetrated in constructing the shaft.

Sec. 28.034. **GEOPHYSICAL AND DRILLING LOG.** If the shaft is to be constructed over, around, or within 2,000 feet of an existing drilled borehole or boreholes, the commission shall require the applicant for a shaft permit to furnish such geophysical logs as may be required by the *commission* [~~department~~], including electric logs, and the drilling log and well completion record of all existing boreholes to the *commission* [~~department~~], along with a complete and accurate core data record of the depth, thickness, and character of the different strata or rock units penetrated as a part of the shaft application.

Sec. 28.035. **SEISMIC REFLECTION SURVEY.** The *commission* [~~department~~] shall require as a part of any shaft application a seismic reflection survey and velocity control data conforming, at minimum, to specifications established by the *commission* [~~department~~] in the rules provided for in Subsection (a) of Section 28.030 of this chapter.

Sec. 28.038. **ENVIRONMENTAL REPORT.** If an environmental report, environmental assessment, or environmental impact statement of any kind that includes an analysis of the environmental impacts of the shaft construction or operation is required by any federal or state agency before approval to construct the shaft, the environmental document, along with evidence of the needed approvals that have been granted, must be submitted to the *commission* [~~department~~] as part of the shaft permit application, and the *commission* [~~department~~] shall make the environmental document available for public review and comment for a period of not less than 30 days before the application for the shaft permit is considered.

Sec. 28.051. **POWER TO ENTER PROPERTY.** Members of the commission, employees and agents of the commission [~~and department~~], and authorized agents or employees of local governments may enter public or private property at any time to inspect and investigate conditions relating to shaft activities or to monitor compliance with a rule, permit, or other order of the commission [~~; board, or department~~]. Members, employees, or agents acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Sec. 28.052. **POWER TO EXAMINE RECORDS.** Members of the commission, employees and agents of the commission [~~and department~~], and authorized agents or employees of local governments may examine and copy those records or memoranda of a shaft permittee or his contractors they are investigating or monitoring as provided by Section 28.051 of this chapter that relate to the construction and operation of a shaft or any other records required to be maintained by law.

SECTION 1.128. Subsection (a), Section 28.053, Water Code, is amended to read as follows:

(a) The commission may require in a shaft permit that the permittee reimburse the *commission* [~~department~~] for reasonable costs of monitoring and on-site, full-time surveillance to determine compliance with a rule, permit, or other order of the *commission* [~~board or department~~].

SECTION 1.129. Subsection (a), Section 28.061, Water Code, is amended to read as follows:

(a) A person who violates any provision of this chapter, any rule of the [~~department or~~] commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in a sum not exceeding \$10,000 for each day of noncompliance and for each act of noncompliance.

SECTION 1.130. Subsection (b), Section 28.062, Water Code, is amended to read as follows:

(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, permit, or order of the commission [~~; board, or department~~], the court may grant the *commission* [~~department~~], without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, after notice and hearing, temporary injunctions, and permanent injunctions.

SECTION 1.131. Subsection (a), Section 28.065, Water Code, is amended to read as follows:

(a) A person who knowingly or intentionally violates this chapter, a rule of the [~~board or~~] commission, or a term, condition, or provision of a permit issued under this chapter is subject to a fine of not more than \$10,000 for each violation and for each day of violation.

SECTION 1.132. Subsections (c) and (d), Section 28.066, Water Code, are amended to read as follows:

(c) A local government or any person may file a written complaint with the *commission* [~~department~~] and request an investigation of an alleged violation by a permittee under this Act. The *commission* [~~department~~] shall reply to the complaint in writing within 30 days after receipt of the complaint and shall provide a copy of any investigation reports relevant to the complaint together with a determination of whether or not the alleged violation was committed.

(d) If the *commission* [~~department~~] does not have a suit brought in court under this Act within 60 days after the written complaint is filed under Subsection (c) of this section, the local

government or person may bring suit in the appropriate court in the county in which the alleged violation occurred or is about to occur in the manner provided for suits by the *commission* [Department] under Sections 28.061 and 28.062 of this Act. Penalties collected in a suit under this subsection shall be paid to the state. In a suit brought by a local government or person under this subsection, the court shall include in any final judgment in favor of the local government or person an award to cover reasonable court costs and attorney's fees.

SECTION 1.133. Subdivision (5), Section 30.003, Water Code, is amended to read as follows:

(5) "River basins" and "coastal basins" mean the river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas [Department of] Water Development Board [Resources], including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes and portions of them, as well as the lands drained by them.

SECTION 1.134. Subsection (a), Section 30.004, Water Code, is amended to read as follows:

(a) This chapter is cumulative of other statutes governing the Texas Department of Health Resources, the Texas Water Development Board, and the Texas [Department of] Water Commission [Resources] relating to:

- (1) the issuance of bonds;
- (2) the collection, transportation, treatment, or disposal of waste; and
- (3) the design, construction, acquisition, or approval of facilities for these purposes.

SECTION 1.135. Sections 30.106, 42.009, 44.009, and 45.006, Water Code, are amended to read as follows:

Sec. 30.106. SUPERVISION BY TEXAS [DEPARTMENT OF] WATER COMMISSION [RESOURCES]. The Texas [Department of] Water Commission [Resources] is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

Sec. 42.009. COOPERATION OF WATER [RIGHTS] COMMISSION. The Texas Water [Rights] Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Sec. 44.009. COOPERATION OF WATER [RIGHTS] COMMISSION. The Texas Water [Rights] Commission shall cooperate with the members in the performance of their duties and shall furnish them any available data and information they need.

Sec. 45.006. COOPERATION OF WATER [RIGHTS] COMMISSION. The Texas Water [Rights] Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

SECTION 1.136. Subsection (a), Section 46.008, Water Code, is amended to read as follows:

(a) The executive director of the Texas [Department of] Water Commission [Resources] or a designated representative selected from the staff of the Texas Water Commission [Department] shall also serve as a commissioner and represent this state on the commission established by Article IX of the compact.

SECTION 1.137. Sections 46.010, 47.006, 47.008, 50.001, and 50.105, Water Code, are amended to read as follows:

Sec. 46.010. COOPERATION OF TEXAS [DEPARTMENT OF] WATER COMMISSION [RESOURCES]. The Texas [Department of] Water Commission [Resources] shall cooperate with the commissioners in the performance of their duties and shall furnish them any factual data and information that are available.

Sec. 47.006. EXECUTIVE DIRECTOR. (a) The executive director of the Texas [Department of] Water Commission [Resources] or a designated representative selected from the staff of the Texas Water Commission [Department] shall also serve as a commissioner and represent this state on the commission established by Section 6 of the compact.

(b) The executive director or the designated representative may exercise the powers and shall discharge the duties provided by the compact.

(c) The executive director or the designated representative is not entitled to additional compensation for performing the duties under the compact but is entitled to reimbursement for actual and necessary expenses incurred while traveling in the discharge of official duties.

Sec. 47.008. COOPERATION OF TEXAS [DEPARTMENT OF] WATER COMMISSION [RESOURCES]. The Texas [Department of] Water Commission [Resources] shall cooperate with the commissioners in the performance of their duties and shall furnish them any factual data and information that is available.

Sec. 50.001. DEFINITIONS. As used in this chapter:

(1) "District" means any district or authority created by authority of either Article III, Section 52, (Subsection (b), Subdivisions (1) and (2)), or Article XVI, Section 59, of the Texas Constitution.

(2) "Commission" means the Texas Water Commission.

(3) "Board" means the governing body of a district.

(4) "Executive director" means the executive director of the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.

~~(5) "Department" means the Texas Department of Water Resources.]~~

Sec. 50.105. INFORMATION OPEN TO PUBLIC. The executive director shall adopt a system for filing the information required by Sections 50.101-50.104 of this code, and shall allow public inspection of this file during the office hours of the *commission* ~~[department]~~.

SECTION 1.138. Subdivision (6), Section 51.001, Water Code, is amended to read as follows:

(6) "Executive director" means the executive director of the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.

SECTION 1.139. Subdivision (2), Section 52.001, Water Code, is amended to read as follows:

(2) "Executive director" means the executive director of the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.

SECTION 1.140. Subdivision (5), Section 54.001, Water Code, is amended to read as follows:

(5) "Executive director" means the executive director of the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.

SECTION 1.141. Subsection (e), Section 54.019, Water Code, is amended to read as follows:

(e) At least 30 days before the date of the hearing, the petitioner shall send the notice of the hearing by certified mail, return receipt requested, to all fee simple landowners, as reflected on the county tax rolls, whose property is located within the proposed district except property owners who have signed the petition for creation. Ownership of the property shall be certified by the tax assessor and collector from the tax rolls as of the date of the filing of the petition with the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.

SECTION 1.142. Section 54.024, Water Code, is amended to read as follows:

Sec. 54.024. SUPERVISION BY COMMISSION ~~[DEPARTMENT]~~. The rights, powers, privileges, authority, and functions conferred on a district by granting of a petition for creation shall be subject to the continuing right of supervision of the state to be exercised by and through the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.

SECTION 1.143. Subsection (a), Section 54.517, Water Code, is amended to read as follows:

(a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the department in accordance with *commission* ~~[board]~~ rules.

SECTION 1.144. Subdivision (4), Section 55.001, Water Code, is amended to read as follows:

(4) "Executive director" means the executive director of the Texas ~~[Department of]~~ Water Commission ~~[Resources]~~.

SECTION 1.145. Section 55.503, Water Code, is amended to read as follows:

Sec. 55.503. TEXAS ~~[DEPARTMENT OF]~~ WATER COMMISSION ~~[RESOURCES]~~ TO INVESTIGATE AND REPORT ON DISTRICTS ISSUING BONDS. (a) The executive director shall investigate and report on the organization and feasibility of all districts issuing bonds under Texas law.

(b) Any district which desires to issue bonds shall submit to the commission a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications prepared in connection with the report.

(c) The executive director shall examine these documents and shall visit the project and carefully inspect it, and may request and shall be supplied with additional data and information necessary to a reasonable and careful investigation of the project and proposed improvements.

(d) The executive director shall file in his office written suggestions for changes and improvements and furnish a copy to the board of directors of the district.

(e) If the commission finally approves or refuses to approve the project or the issuance of the bonds for any improvement, it shall make a full written report, file the report in its office, and furnish a copy of the report to the board of directors of the district.

SECTION 1.146. Subsection (b), Section 56.022, Water Code, is amended to read as follows:

(b) The engineer shall obtain information regarding land and outlets inside the proposed district from the Texas ~~[Department of]~~ Water *Commission* ~~[Resources]~~ and from other sources, and he shall cooperate with the Texas ~~[Department of]~~ Water *Commission* ~~[Resources]~~ in the discharge of its duties.

SECTION 1.147. Section 57.001, Water Code, is amended to read as follows:

Sec. 57.001. **DEFINITIONS.** In this chapter:

- (1) "District" means levee improvement district.
- (2) "Board" means the board of directors of a levee improvement district.
- (3) "Water development board" means the Texas Water Development Board.
- (4) "Commissioners court" means the commissioners court of the county in which the district is located or the commissioners court of the county of jurisdiction.
- (5) "Executive director" means the executive director of the Texas ~~[Department of]~~ Water *Commission* ~~[Resources]~~.
- (6) ~~["Department" means the Texas Department of Water Resources.~~
- ~~[(7)] "Commission" means the Texas Water Commission.~~

SECTION 1.148. Subsection (b), Section 57.092, Water Code, is amended to read as follows:

(b) The powers granted in this section are subject to the supervision and direction of the *commission* ~~[department]~~ or other authority created by law.

SECTION 1.149. Section 57.151, Water Code, is amended to read as follows:

Sec. 57.151. **AUTHORITY OF ENGINEER.** The engineer, subject to the authority of the *commission* ~~[department]~~, shall control the engineering work of the district.

SECTION 1.150. Section 58.452, Water Code, is amended to read as follows:

Sec. 58.452. **COMMISSION** ~~[DEPARTMENT]~~ **SUPERVISION OF PROJECTS AND IMPROVEMENTS.** (a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the commission.

(b) The executive director may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications by the commission.

(c) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, he shall give written notice immediately by certified mail to each member of the board of the district and the district's manager.

(d) If within 10 days after the notice is mailed the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the commission shall give written notice of this fact to the attorney general.

(e) After the attorney general receives this notice, he may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

SECTION 1.151. Sections 64.002, 64.014, 64.015, and 64.263, Water Code, are amended to read as follows:

Sec. 64.002. **TERRITORY INCLUDED IN AUTHORITY.** The authority shall include all of the area in Texas that has beneath it the subsurface formation known as the Ogallala Formation as that area is determined, fixed, and certified by the Texas Water *Commission* ~~[Development Board]~~, together with all of any county, a part of which is included in that area, provided that the area in Borden, Crosby, Dickens, and Garza Counties, and any county which does not have at least a portion of the Ogallala Formation beneath it shall not be initially included in the import area. A county or any portion of a county which is not included in the import area shall not be subject to assessment or taxation by the authority unless subsequently annexed to the authority.

Sec. 64.014. **FINDINGS AND ACTION BY COMMISSION** ~~[DEVELOPMENT BOARD]~~. (a) If the *commission* ~~[development board]~~ finds, after public hearing, that the authority is feasible and practicable, that it would be a benefit to the area included in the authority, and that it would be a public benefit or utility, the *commission* ~~[development board]~~ shall make these findings and shall grant the petition, otherwise the petition shall be denied.

(b) The *commission's* ~~[development board's]~~ findings of benefit to the land included in the authority are final and conclusive unless judicial review is sought in the manner provided in Subchapter 1 [j] of Chapter 5 of this code for appeals from other orders of the *commission* ~~[development board]~~, and after the *commission's* ~~[development board's]~~ order of creation is final, no land may be excluded from the authority, but land may be added and annexed in the manner provided in this chapter.

Sec. 64.015. DIVIDING AUTHORITY INTO PRECINCTS. At the time a petition for creation is granted, the *commission* [~~development board~~], in its order, shall divide the authority into 15 precincts, with each precinct having approximately the same number of persons residing in its area as each of the other precincts.

Sec. 64.263. FURNISHING DESCRIPTION. The board shall furnish the *commission* [~~development board~~] a detailed description of land annexed to the authority within 30 days after the annexation.

SECTION 1.152. Subsection (c), Section 64.121, Water Code, is amended to read as follows:

(c) Copies of the written report of the audit, certified to by the accountant or accountants, shall be placed and kept on file at the office of the authority and shall be open to public inspection at all reasonable times. A copy of the audit shall be filed with the *commission* [~~Department of Water Resources~~].

SECTION 1.153. Subdivision (5), Section 65.001, Water Code, is amended to read as follows:

(5) "Executive director" means the executive director of the Texas [~~Department of~~] Water *Commission* [~~Resources~~].

SECTION 1.154. Subsection (a), Section 131.139, Natural Resources Code, is amended to read as follows:

(a) The commission immediately shall submit copies of the permit application to the Parks and Wildlife Department, Texas Water *Commission* [~~Quality Board, Texas Water Development Board~~], General Land Office, Texas Air Control Board, Texas Historical Commission, [~~Texas Water Rights Commission,~~] State Soil and Water Conservation Board, Bureau of Economic Geology, Texas Department of Health Resources, and other state agencies whose jurisdiction the commission feels the particular mining operation may affect.

SECTION 1.155. Subdivision (3), Section 57.001, Water Code, is amended to read as follows:

(3) "Water *commission* [~~development board~~]" means the Texas Water *Commission* [~~Development Board~~].

SECTION 1.156. Subdivision (2), Section 64.003, Water Code, is amended to read as follows:

(2) "*Commission*" means the Texas Water *Commission* [~~"Development board" means the Texas Water Development Board~~].

SECTION 1.157. Subsections (a), (b), (c), and (e), Section 64.011, Water Code, are amended to read as follows:

(a) On its own motion or on receiving a petition signed by at least 50 landowners in the proposed import area, the *commission* [~~development board~~], after notice and hearings, shall define and certify the import area.

(b) The *commission* [~~development board~~] shall schedule and conduct a minimum of five hearings within the import area to allow adequate opportunity for testimony from those who wish to appear. Notice of the hearings shall be published in a newspaper or newspapers with general circulation within the import area at least 14 days before the day of the hearing.

(c) Additional special hearings may be conducted in each county for which a petition containing the signatures of not less than 10 percent of the registered voters in that county is submitted if the petition is submitted within 30 days after the *commission* [~~development board~~] hearings begin, requesting a special hearing to be conducted in that county. Notice of each special hearing, if any, shall be published in a newspaper with general circulation within the county in which the special hearing is to be held at least 14 days before the day of the special hearing.

(e) The *commission* [~~development board~~] shall give consideration to all relevant evidence presented at the public hearing held by it and shall not authorize an election until it determines that adequate water would be contractually available on an equitable basis for all the water needs existing within the authority for import into the area.

SECTION 1.158. Subsections (a) and (d), Section 64.016, Water Code, are amended to read as follows:

(a) Within 180 days from the effective date of the order of the *commission* [~~development board~~] granting the petition for creation of the authority, the board of the authority shall order an election to be held throughout the authority within 60 days, at which there is to be submitted the question of whether or not the establishment of the authority is confirmed, the question of election of directors, the question of levying, assessing, and collecting an ad valorem tax throughout the authority, and any other questions required by this chapter or by the board.

(d) If a majority of the votes cast in the election favor confirmation of the authority, the board shall declare the results, and the authority is created and shall have all of the powers and authority conferred by this chapter. If a majority of the votes cast in the election do not confirm

the authority, no further election may be held for confirmation for at least 12 months, and if the authority is not confirmed within five years from the day of the *commission's* [~~development board's~~] order granting the petition to create the authority or if the voters refuse to authorize the levy, assessment, and collection of an ad valorem tax through the authority within the five-year period, the authority is null and void, and the *commission* [~~development board~~] is to enter an order to this effect.

SECTION 1.159. Subsection (a), Section 64.051, Water Code, is amended to read as follows:

(a) The authority's powers and duties shall be exercised through a board of directors. The first directors shall be appointed by the *commission* [~~development board~~] in its order of creation, naming one director from each precinct, and subsequent directors shall be elected from each of the precincts into which the authority is divided, with one director being elected from each precinct.

SECTION 1.160. Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) [~~"Board" means the Texas Water Development Board.~~

[~~2~~] "Board of health" means the Texas Board of Health.

(2) [~~3~~] "Class I industrial solid waste" means any industrial solid waste designated as Class I by the Executive Director of the Texas Department of Water Resources as any industrial solid waste or mixture of industrial solid wastes which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste.

(3) [~~4~~] "Commission" means the Texas Water Commission.

(4) [~~5~~] "Commissioner" means the Commissioner of Health.

(5) [~~6~~] "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(6) [~~7~~] "Department" means the Texas Department of Health.

(7) [~~8~~] "~~Department of water resources~~" means the ~~Texas Department of Water Resources~~.

[~~9~~] "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(8) [~~10~~] "Executive director" means the Executive Director of the Texas Department of Water Resources.

(9) [~~11~~] "Garbage" means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(10) [~~12~~] "Hazardous waste" means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(11) [~~13~~] "Industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(12) [~~14~~] "Local government" means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act.

(13) [~~15~~] "Management" means the systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(14) [~~16~~] "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(15) [~~17~~] "Person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(16) [~~18~~] "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a solid waste facility is to be located including any

person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.

(17) [(10)] "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. Unless the state agency determines that regulation of such activity under this Act is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the Administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(18) [(20)] "Radioactive waste" means that waste which requires specific licensing under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and the rules adopted by the Texas Board of Health under that law.

(19) [(21)] "Rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F).

(20) [(22)] "Sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the *commission* [board].

(21) [(23)] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(22) [(24)] "Solid waste" means any garbage, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission.

(23) [(25)] "Solid waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; e.g., one or more landfills, surface impoundments, or combinations of them.

(24) [(26)] "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the *commission* [board] or board of health.

(25) [(27)] "Storage" means the holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

SECTION 1.161. Subsections (a) and (b), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) As used in this section, the term "state agency" refers to either the department or the *commission* [department of water resources] and "state agencies" means both the department and the *commission* [department of water resources].

(b) The department is authorized to develop a state municipal solid waste plan, and the *commission* [department of water resources] is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

SECTION 1.162. Subdivision (2), Subsection (f), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) No person shall process, store, or dispose of hazardous industrial solid wastes under this subsection without having first obtained a hazardous waste permit issued by the commission; provided, however, that any person who has on or before November 19, 1980, commenced on-site processing, storing or disposing of hazardous waste under this subsection and who has filed a hazardous waste permit application in accordance with the rules of the *commission* [~~board~~] may continue to process, store, or dispose of hazardous waste until such time as the commission approves or denies the application. Upon its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit. The *commission* [~~board~~] by rule shall establish procedures for public notice and any public hearing authorized by this subsection. The commission may include requirements in the permit for any remedial actions by the applicant that are determined by the commission to be necessary to protect the public health and safety and the environment.

SECTION 1.163. Subsections (b) and (c), Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The *commission* [~~department of water resources~~] is hereby designated the state solid waste agency with respect to the management of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The *commission* [~~department of water resources~~] shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The *commission* [~~department of water resources~~] has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The *commission* [~~department of water resources~~] shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the *commission* [~~department of water resources~~] by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste, are involved in any activity of management of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste under the jurisdiction of the *commission* [~~department of water resources~~] may be accepted in a municipal solid waste facility if authorized in writing by the department with the written concurrence of the *commission* [~~department of water resources~~]. Solid waste, including hazardous waste, under the jurisdiction of the department may be accepted in an industrial solid waste facility, if authorized in writing by the *commission* [~~department of water resources~~] with the written concurrence of the department.

SECTION 1.164. Subsections (a), (c), (d), and (f), Section 5, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the *commission* [~~department of water resources~~] from exercising any of the powers vested in the department or the *commission* [~~department of water resources~~] under other provisions of this Act, including specifically the provisions authorizing the department and the *commission* [~~department of water resources~~] to issue permits for the construction, operation, and maintenance of facilities for the processing, storage, or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the *commission* [~~department of water resources~~], by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

(c) A county may develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the *commission* [~~department of water resources~~].

(d) Except as provided in Subsection (a) of this section, a county is empowered to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the processing, storage, or disposal of solid waste, excluding hazardous waste, in areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. If a county

elects to exercise licensing authority, it must adopt, promulgate, and enforce rules for the management of solid waste. The rules shall be compatible with and not less stringent than those of the department or the *commission* [~~department of water resources~~], as appropriate, and must be approved by, the department or the *commission* [~~department of water resources~~] as appropriate. The following additional provisions apply if a county exercises the power authorized in this Subsection (d):

(1) The county shall mail a copy of the license application with pertinent supporting data to the department, the *commission* [~~department of water resources~~], and the Texas Air Control Board. The governmental entities to whom the information is mailed shall have no less than 60 days to submit comments and recommendations on the license application before the county acts on the application unless waived by the commenting agency.

(2) A separate license shall be issued for each solid waste facility. The license shall include the names and addresses of the person or persons who own the land where the solid waste facility is located and the person who is or will be the operator or person in charge of the facility; a legal description of the land on which the facility is located; and the terms and conditions on which the license is issued, including the duration of the license. The county is authorized to charge a fee for a license of not to exceed \$100.00, as set by the commissioners court of the county. Receipts from the fees shall be placed in the general revenue fund of the county.

(3) The county may amend, extend, or renew any license it issues in accordance with rules prescribed by the county. The procedures prescribed in Paragraph (1) of this Subsection (d) apply also to applications to amend, extend, or renew a license.

(4) No license for the use of a facility for the processing, storage, or disposal of solid waste may be issued, amended, renewed, or extended without the prior approval, as appropriate, of the department or the *commission* [~~department of water resources~~]. If a license is issued, amended, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the facility does not need to obtain a permit from the department or the *commission* [~~department of water resources~~] for the same facility.

(5) A license issued under this Act is issued only to the person in whose name the application is made and is issued only for the facility described in the permit. A license may not be transferred without prior notice to and prior approval by the county which issued it.

(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or rules controlling the processing, storage, or disposal of solid waste. For like reasons, the department and the *commission* [~~department of water resources~~] each may, for good cause, after hearing with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those facilities which fall, under the terms of this Act, within the jurisdiction of the state agency acting.

(f) A county is authorized to enforce the requirements of this Act and the rules promulgated by the board of health and the *commission* [~~board~~] as related to the management of solid waste.

SECTION 1.165. Section 7, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. (a) The authorized agents or employees of the department, the *commission* [~~department of water resources~~], and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town, its extraterritorial jurisdiction, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

(b) The authorized agents or employees of the department and the *commission* [~~department of water resources~~] may have access to, examine, and copy during regular business hours any records pertaining to hazardous waste management and control.

(c) Records copied pursuant to Subsection (b) of this section shall be public records, except that, if a showing satisfactory to the commissioner of the department or to the executive director is made by the owner of such records that the records would divulge trade secrets if made public, then the department or the *commission* [~~department of water resources~~] shall consider such copied records as confidential. Nothing in this subsection shall require the *commission* [~~department of water resources~~] or the department to consider the composition or characteristics of solid waste being processed, stored, disposed, or otherwise handled to be held confidential.

SECTION 1.166. Subsection (a), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Civil Penalties; Injunction. (1) No person may cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste or the use or operation of a solid waste facility for the storage, processing, or disposal of solid waste or for the extraction of materials under Subsection (j) of Section 4 of this Act, in violation of this Act or of the rules, permits, licenses or other orders of the department or the *commission* [~~department of water resources~~], or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

(2) Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the *commission* [~~department of water resources~~], or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, which is not a requirement applicable to hazardous waste, is subject to a civil penalty of not less than \$100.00 nor more than \$2,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8. Any person who violates any requirement applicable to hazardous waste shall be subject to a civil penalty of not less than \$100.00 nor more than \$25,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8(a).

(3) Whenever it appears that a person has violated, or is violating or threatening to violate, any provision of this Act, or of any rule, permit, or other order of the department or the *commission* [~~department of water resources~~], then the department or the *commission* [~~department of water resources~~] may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty as provided by this subsection, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, permit, or other order of the department or the *commission* [~~department of water resources~~], the district court shall grant appropriate injunctive relief. At the request of the commissioner or the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in this subsection.

(4) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the *commission* [~~department of water resources~~], a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the *commission* [~~department of water resources~~] and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(5) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the *commission* [~~department of water resources~~], a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the *commission* [~~department of water resources~~] and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(6) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, permit, license or other order of the *commission* [~~department of water resources~~], the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(7) In a suit brought by a local government under Subsection (4) or (5) of this section, the *commission* [~~department of water resources~~] and the department are necessary and indispensable parties.

(8) Any party to a suit may appeal from a final judgment as in other civil cases.

(9) All civil penalties recovered in suits instituted under this Act by the State of Texas through the *commission* [~~department of water resources~~] or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

SECTION 1.167. Sections 9 and 10, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the *commission* [~~department of water resources~~] may appeal by filing a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the *commission* [~~department of water resources~~], a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable.

Sec. 10. This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws. Nothing in this Act diminishes or limits, or is intended to diminish or limit, the authority of the department, the *commission* [~~department of water resources~~], the Texas Air Control Board, or local governments in performing any of the powers, functions, and duties vested in those governmental entities by other laws.

SECTION 1.168. Effective on the delegation of NPDES permit authority to the Texas Water Commission by the administrator of the United States Environmental Protection Agency under Section 402(b) of the Federal Water Pollution Control Act, Section 5.175, Water Code, as added by Section 1.001 of this Act, is revised to read as follows:

Sec. 5.175. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. (a) All information, documents, and data collected by the commission in the performance of its duties are the property of the state.

(b) Except as provided by Subsection (c) of this section, records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours.

(c) If a showing satisfactory to the executive director is made by any person that those records, reports, data, or other information, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commission shall consider those records, reports, data, or other information as confidential.

(d) This chapter may not be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications.

(e) Records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the state or of the United States with responsibilities in water pollution control. However, this disclosure or transmittal may be made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity.

(f) The executive director may not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

SECTION 1.169. Effective on the delegation of NPDES permit authority to the Texas Water Development Board by the administrator of the United States Environmental Protection Agency under Section 402(b) of the Federal Water Pollution Control Act, Section 6.153, Water Code, as added by Section 1.002 of this Act, is revised to read as follows:

Sec. 6.153. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided in this code and subject to the specific limitations provided in this code, on application of any person, the board shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman of the board or the executive administrator is admissible as evidence in any court or administrative proceeding.

(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the board, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Statutes.

SECTION 1.170. Section 5.053, Water Code (effective on delegation of NPDES permit authority), is repealed.

PART 2. WATER DISTRICTS AND AUTHORITIES

ARTICLE A. STUDY COMMITTEE

SECTION 2.001. WATER DISTRICT AND RIVER AUTHORITY STUDY COMMITTEE. The Water District and River Authority Study Committee is created.

SECTION 2.002. COMPOSITION. The committee is composed of:

(1) four members appointed by the governor, three of whom are governing board members or general managers of water districts and river authorities created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution and one of whom is a representative of the general public with a demonstrated involvement in business and industry;

(2) three members appointed by the lieutenant governor, two of whom are state senators and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment; and

(3) three members appointed by the speaker of the house of representatives, two of whom are state representatives and one of whom is a representative of the general public with a demonstrated involvement in municipal water concerns or agriculture.

SECTION 2.003. CHAIRMAN. The governor shall appoint the chairman of the committee.

SECTION 2.004. MEETINGS. The committee shall meet at least quarterly and at other times at the call of the chair.

SECTION 2.005. POWERS AND DUTIES. (a) The committee shall study the various districts and authorities created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution to determine if their powers and duties are appropriate for management of the state's water resources and to determine if the state's role relative to the creation and operation of those authorities should be changed.

(b) Not later than December 1, 1986, the committee shall complete and have ready to submit a report to the 70th Legislature. In addition to any other matters that the committee may include in its report, the committee shall include in the report findings and supporting data relating to whether:

(1) the legislature should make water districts and river authorities more accountable to the state and, if so, the methods of accountability that should be adopted; and

(2) the state should be more involved in the creation and operation of those districts and authorities.

SECTION 2.006. STAFF. The Texas Water Commission shall provide staff for the committee as necessary to assist the committee in the performance of its duties.

SECTION 2.007. EXPIRATION. This article of Part 2 of this Act expires January 1, 1987.

ARTICLE B. RIVER AUTHORITY POWERS

SECTION 2.008. Section 50.381, Water Code, is amended to read as follows:

Sec. 50.381. RIVER AUTHORITIES AND CERTAIN DISTRICTS: [STATE AUDITOR MAY] AUDIT. (a) *The State Auditor shall audit, on a regular basis, the financial transactions of the river authorities and districts listed in Subsection (b) of this section. The State Auditor shall determine the times at which the audits shall be conducted.*

(b) *The river authorities and districts subject to this section are:*

(1) *the Angelina and Neches River Authority;*

(2) *the Bandera County River Authority;*

(3) *the Brazos River Authority;*

- (4) the Central Colorado River Authority;
- (5) the Guadalupe-Blanco River Authority;
- (6) the Kimble County River Authority;
- (7) the Lavaca-Navidad River Authority;
- (8) the Lower Colorado River Authority;
- (9) the Mason County River Authority;
- (10) the Nueces River Authority;
- (11) the Palo Duro River Authority;
- (12) the Red River Authority of Texas;
- (13) the Sabine River Authority;
- (14) the San Antonio River Authority;
- (15) the San Jacinto River Authority;
- (16) the Trinity River Authority of Texas;
- (17) the Upper Colorado River Authority;
- (18) the Upper Guadalupe River Authority;
- (19) the Lower Neches Valley Authority;
- (20) the Colorado River Municipal Water District;
- (21) the North Texas Municipal Water District;
- (22) the Tarrant County Water Control and Improvement District No. 1; and
- (23) the Gulf Coast Waste Disposal Authority.

(c) ~~[If the State Auditor considers it necessary, he may have an audit made of any river authority in this state.]~~ The audit shall be conducted in the manner provided by law for audit of the state government.

(d) *The river authority or district shall reimburse the State Auditor for the actual cost incurred in conducting an audit of the authority or district under this section. The State Auditor shall bill the river authority or district for this amount on approval of the Legislative Audit Committee. Money received as reimbursement shall be deposited in the General Revenue Fund.*

ARTICLE C. LEVEE IMPROVEMENT DISTRICTS

SECTION 2.009. Subsection (c), Section 57.156, Water Code, is amended to read as follows:

(c) An approved plan of reclamation cannot be modified or changed in any manner if the cost of the plan is over \$100,000, ~~until \$1,000, unless~~ a petition, signed by ~~[the owners of]~~ a majority of the board ~~[acreege in the district]~~ is presented to ~~[and approved by]~~ the commission. *The modified plan must then be approved by the commission.*

PART 3. WATER RIGHTS

ARTICLE A. PERMIT CONSIDERATIONS

SECTION 3.001. Chapter 11, Water Code, is amended by adding Sections 11.149 and 11.150 to read as follows:

Sec. 11.149. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the commission shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse impacts on such habitat. In determining whether to require an applicant to mitigate adverse impacts on a habitat, the commission may consider any net benefit to the habitat produced by the project. The commission shall offset against any mitigation required by the U.S. Fish and Wildlife Service pursuant to 33 C.F.R. Sections 320-330 any mitigation authorized by this section.

Sec. 11.150. EFFECTS OF PERMITS ON WATER QUALITY. In consideration of an application for a permit under this subchapter, the commission shall assess the effects, if any, of the issuance of the permit on water quality in this state.

ARTICLE B. PERMIT HEARINGS

SECTION 3.003. Subsections (d) and (f), Section 11.143, Water Code, are amended to read as follows:

(d) *Except as otherwise specifically provided by this subsection, before [Before] the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section. The commission may act on the application without holding a public hearing if:*

- (1) *not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;*

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing is not requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(f) If on the date specified in the notice prescribed by Subsection (d) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene. [The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first class mail to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application.]

SECTION 3.004. Section 11.132, Water Code, is amended to read as follows:

Sec. 11.132. NOTICE [OF HEARING]. (a) Notice shall be given to the persons who in the judgment of the commission may be affected by an application, including those persons listed in Subdivision (2), Subsection (d), of this section. The commission, on the motion of a commissioner or on the request of the executive director or any affected person, shall hold a public hearing on the application. [The commission shall give notice of the hearing on the application as prescribed by this section.

(b) In the notice, the commission shall:

- (1) state the name and address of the applicant;
- (2) state the date the application was filed;
- (3) state the purpose and extent of the proposed appropriation of water;
- (4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- (5) specify the time and place of the hearing; and
- (6) give any additional information the commission considers necessary.]

(b) [(e)] If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

(c) In the notice, the commission shall:

- (1) state the name and address of the applicant;
- (2) state the date the application was filed;
- (3) state the purpose and extent of the proposed appropriation of water;
- (4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- (5) specify the time and location where the commission will consider the application; and
- (6) give any additional information the commission considers necessary.

(d) The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to:

(A) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the department; and

(B) all navigation districts within the river basin concerned; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing has not been requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) The inadvertent failure of the commission to mail a notice under Subdivision (2), Subsection (d), of this section to a navigation district that is not a claimant or appropriator of water does not prevent the commission's consideration of the application.

(f) If, on the date specified in the notice prescribed by Subsection (c) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time

and place where the hearing is to convene. [(d) The notice shall be published once a week for two consecutive weeks before the date stated in the notice for the hearing in some newspaper having a general circulation in the section of the state where the source of water is located.

[(e) The commission shall also mail a copy of the notice by first-class mail, postage prepaid, to each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the office of the commission. The notice shall also be mailed by first-class mail, postage prepaid, to all navigation districts within the watershed concerned. The inadvertent failure of the commission to mail a notice to a navigation district which is not a claimant or appropriator of water does not prevent the hearing on the application.

[(f) The notice shall be mailed and first published not less than 20 days before the date set for the hearing.]

ARTICLE C. WATER RATE AND SERVICE REGULATION

SECTION 3.005. Title 2, Water Code, is amended by adding Chapter 13 to read as follows:

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 water and sewer utilities.

(b) The legislature finds that:

(1) water and sewer 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) water and sewer 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 water and sewer utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Sec. 13.002. **DEFINITIONS.** In this chapter:

(1) "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.

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

(3) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, 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, 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 city, town, 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.

(4) "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 utility for any service, product, or commodity described in Subdivision (3) of this section and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(5) "Commission" means the Texas Water Commission.

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

(7) "Affected person" means any utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a utility with respect to any service performed by the utility or that desires to enter into competition.

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

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

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

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

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of 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 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 commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

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

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

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

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

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

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

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

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

(17) "Test year" means the most recent 12-month period beginning with a calendar quarter or a fiscal year quarter for which operating data for a utility are available.

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

(19) "Executive director" means the executive director of the Texas Water Commission.

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

Sec. 13.003. **APPLICABILITY OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT.** The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all proceedings under this chapter except to the extent inconsistent with this chapter.

[Sections 13.004-13.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 13.011. EMPLOYEES. (a) *The executive director, subject to approval by the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out 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 duties of the executive director and the staff include:*

(1) *accumulation of evidence and other information from water and sewer utilities and from the commission and the board and from other sources for the purposes specified by this chapter;*

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

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

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

(5) *preparation of recommendations and a report for inclusion in the annual report of the commission;*

(6) *protection and representation of the public interest, together with the public interest advocate, before the commission; and*

(7) *other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.*

Sec. 13.012. ORDERS; TRANSCRIPT AND EXHIBITS; PUBLIC RECORDS. (a) *All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed.*

(b) *The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters that were at any time pending before the commission and to records, reports, and inspections required by Subchapter E of this chapter shall be public records, subject to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).*

Sec. 13.013. ANNUAL REPORT. (a) *In its annual report to the governor, the commission shall summarize its proceedings concerning the operations of the commission and the water and sewer utility industry, including a list of its receipts and the sources of its receipts and its expenditures and the nature of those expenditures, and shall set forth any other information the commission considers of general interest.*

(b) *In the annual report issued in the year immediately preceding each regular session of the legislature, the commission shall include any suggestions for modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as the commission considers appropriate for protecting and furthering the interest of the public.*

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

Sec. 13.015. INFORMAL PROCEEDING. *A proceeding involving a water or sewer utility, a retail public water or sewer utility as defined by Section 49, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), or a water supply or sewer service corporation may be an informal proceeding, except that the proceeding is subject to Section 13.012 of this code, the public notice requirements of this chapter, and the rules and orders of the regulatory authority involved.*

[Sections 13.016-13.040 reserved for expansion]

SUBCHAPTER C. JURISDICTION

Sec. 13.041. GENERAL POWER; RULES; HEARINGS. (a) *The commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of this power and jurisdiction.*

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

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

Sec. 13.042. JURISDICTION OF MUNICIPALITY; SURRENDER; ORIGINAL AND APPELLATE JURISDICTION OF 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) At any time after the second anniversary of the date this chapter takes effect, a municipality may elect to have the commission exercise exclusive original jurisdiction over water or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. On receipt of a petition signed by the lesser of 20,000 or 10 percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

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

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

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

Sec. 13.043. MUNICIPALITY-OWNED UTILITIES. This subchapter may not be construed to confer on the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate land and supervise water and sewer utilities within their boundaries, except as provided in this chapter.

Sec. 13.044. NONPROFIT WATER SUPPLY CORPORATIONS. (a) On petition of five percent of the ratepayers of a nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), the commission shall assume jurisdiction over the nonprofit water supply corporation under this chapter. If there are more than 100 ratepayers of the nonprofit water supply corporation, the petition is sufficient if signed by 100 of those ratepayers.

(b) The commission by rule shall adopt the manner and form for submitting and processing a petition under this section.

(c) If a nonprofit water supply corporation comes under the jurisdiction of the commission under this section, the jurisdiction of the commission may be rescinded on a petition meeting the same criteria as required by Subsection (a) of this section for a petition for the assumption of jurisdiction. However, if the jurisdiction is rescinded, the rescission is not applicable to any case involving the nonprofit water supply corporation that is pending before the commission on or before the date of rescission.

[Sections 13.045-13.080 reserved for expansion]

SUBCHAPTER D. MUNICIPALITIES

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 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.

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 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 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 commission or other standards and rules not inconsistent with them.

(c) *Notwithstanding any election, the commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this 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 shall be filed with the governing body of the municipality as well as with the commission.*

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

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.*

Sec. 13.084. AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT. *The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination 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 for the reasonable costs of those services.*

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

Sec. 13.086. APPEAL. (a) *Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. Citizens of a municipal utility district may appeal any action of the district's governing body affecting the rates for water or sewer service to the commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipal utility district.*

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

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

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

(e) *Ratepayers of a municipal utility district outside the district's boundaries may appeal any action by the district's governing body affecting water or sewer rates or service of the district through filing with the commission a petition for review signed by the lesser of 10,000 or five percent of the ratepayers served by such municipal utility district outside the district's boundaries. For purposes of this section each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. Such petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.*

[Sections 13.087-13.130 reserved for expansion]

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 commission uniform accounts of all business transacted. The 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 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 commission. However, the commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission for a utility or class of utilities 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 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 commission prescribes. 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 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) For the purposes of this section, "utility" includes "municipally owned utility."

Sec. 13.132. **POWERS OF COMMISSION.** (a) The 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;

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

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 commission 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.

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.

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.

Sec. 13.136. FILING SCHEDULE OF RATES, RULES, AND REGULATIONS. Every utility shall file with each regulatory authority schedules 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 by the utility. Every utility shall file with and as a part of those schedules all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by the utility.

Sec. 13.137. OFFICE OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall have an office in a county of this state 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 commission to be kept in this state.

(b) 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 commission.

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

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

Sec. 13.139. STANDARDS OF SERVICE. (a) Every utility shall furnish the service, instrumentalities, and facilities as are safe, adequate, efficient, and reasonable.

(b) The regulatory authority, after reasonable notice and hearing on its own motion or on complaint, may:

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

(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 service of any utility.

(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.

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.

[Sections 13.141-13.180 reserved for expansion]

SUBCHAPTER F. PROCEEDINGS BEFORE REGULATORY AUTHORITY

Sec. 13.181. **POWER TO ENSURE COMPLIANCE; RATE REGULATION.** Subject to this chapter, the 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 water and sewer 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.

Sec. 13.182. **JUST AND REASONABLE RATES.** 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. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission considers that treatment to be appropriate.

Sec. 13.183. **FIXING OVERALL REVENUES.** In fixing the rates of a public utility, the regulatory authority shall fix its overall revenues at a level that will 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.

Sec. 13.184. **FAIR RETURN; BURDEN OF PROOF.** (a) The regulatory authority 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.

Sec. 13.185. **COMPONENTS OF INVESTED CAPITAL AND NET INCOME.** (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. Invested capital is the actual money cost or the actual money value of any consideration paid, other than money, of the property at the time it shall have been dedicated to public use, whether by the utility that is the present owner or by a predecessor, less depreciation.

(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 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 Section 13.187 of this chapter; 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.

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 or generate 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 or generation in any investigation of the reasonableness of the rates of the utility.

Sec. 13.187. STATEMENT OF INTENT TO CHANGE RATES; MAJOR CHANGES; HEARING; SUSPENSION OF RATE SCHEDULE; DETERMINATION OF RATE LEVEL. (a) A utility may not make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and any other information that may be required by the regulatory authority's rules. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of the proposed change once a week for four consecutive weeks in a newspaper with general circulation in each county containing territory affected by the proposed change, and to any other affected persons as required by the regulatory authority's rules. This subsection does not apply to a water or sewer utility that:

- (1) has fewer than 150 customers;
- (2) is not a member of a group filing a consolidated tax return; and
- (3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rates to take effect before the end of the 35-day period under any conditions it may prescribe, subject to suspension as provided in this chapter. All changes shall be indicated immediately on its schedules by the utility. For the purpose of this subsection, a major change is an increase in rates that would increase the aggregate revenues of the applicant more than the greater of \$100,000 or two and one-half percent, but is not a change in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held on notice to the public.

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

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

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

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

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

Sec. 13.188. RATES FOR AREAS NOT WITHIN MUNICIPALITY. Water and sewer utility rates for areas not within any municipality may not exceed, without commission approval, 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Sec. 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.

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.

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.

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.

[Sections 13.193-13.240 reserved for expansion]

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

Sec. 13.241. **DEFINITIONS.** In this subchapter:

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

(2) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation that is providing utility services other than water and sewer services and that is under the jurisdiction of the Railroad Commission of Texas or the Public Utility Commission of Texas, but does include a water supply or sewer service corporation.

Sec. 13.242. **CERTIFICATE REQUIRED.** Unless otherwise specified, a public utility may not in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require 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 public utility service to any area to which retail 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.

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

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

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

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

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

Sec. 13.244. **APPLICATION; MAPS; EVIDENCE AND CONSENT.** (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment of a certificate.

(b) Not later than 90 days after the effective date of this chapter, or at a later date on request in writing by a public utility when good cause is shown, or at any later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

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

Sec. 13.245. **PRIOR CONSTRUCTION OR OPERATION.** On application made to the commission, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility or retail public utility actually providing service to any geographical area on September 1, 1975, or to any person or corporation

actively engaged on September 1, 1975, in the construction, installation, extension, or improvement of or addition to any facility or system used or to be used in providing public utility service.

Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL; FACTORS CONSIDERED. (a) If an application for a certificate of public convenience and necessity is filed, the commission shall give notice of the application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 13.245 of this code, the commission may grant applications and issue certificates only if the commission finds that a certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue a certificate 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.

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

Sec. 13.247. AREA INCLUDED WITHIN CITY, TOWN, OR VILLAGE. (a) If an area has been or is included within the boundaries of a city as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area before the inclusion may continue and extend service in its area of public convenience and necessity within the annexed or incorporated area pursuant to the rights granted by its certificate and this chapter.

(b) Notwithstanding any other provision of law, a 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 public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets, by giving to the public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

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

Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

Sec. 13.249. PRELIMINARY ORDER FOR CERTIFICATE. If a public utility desires to exercise a right or privilege under a franchise or permit that it contemplates securing but that has not as yet been granted to it, the public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission then may issue an order declaring that it will, on application under such rules as it prescribes, issue the desired certificate, on terms and conditions it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Sec. 13.250. CONTINUOUS AND ADEQUATE SERVICE; DISCONTINUANCE, REDUCTION, OR IMPAIRMENT OF SERVICE. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

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

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

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights

obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Sec. 13.252. INTERFERENCE WITH OTHER PUBLIC UTILITY. If a 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 public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the line, plant, or system affected.

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. After notice and hearing, the commission may:

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

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

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

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

[Sections 13.255-13.300 reserved for expansion]

SUBCHAPTER H. SALE OF PROPERTY AND MERGERS

Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) A utility may not sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 or merge or consolidate with another utility operating in this state unless the utility reports the transaction to the commission within a reasonable time.

(b) On the filing of a report with the commission, the commission shall investigate the transaction with or without public hearing to determine whether the transaction is consistent with the public interest.

(c) In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, or consolidated.

(d) If the commission finds that the transaction is not in the public interest, the commission shall take the effect of the transaction into consideration in the ratemaking proceedings and disallow the effect of the transaction if it will unreasonably affect rates or service.

(e) This section may not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the utility by construction.

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. A utility may not purchase voting stock in another utility doing business in this state unless the utility reports the purchase to the commission.

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 commission within a reasonable time.

[Sections 13.304-13.340 reserved for expansion]

SUBCHAPTER I. RELATIONS WITH AFFILIATED INTERESTS

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of 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.

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

[Sections 13.343-13.380 reserved for expansion]

SUBCHAPTER J. JUDICIAL REVIEW

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

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 commission are excessive and who is a prevailing party in proceedings for review of a commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the 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 harrassment, the court may award to the defendant utility reasonable attorney's fees.

[Sections 13.383-13.410 reserved for expansion]

SUBCHAPTER K. VIOLATIONS AND ENFORCEMENT

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. If it appears to the commission that any utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the commission entered or adopted under this chapter or that any 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 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 commission against the 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.

Sec. 13.412. RECEIVERSHIP. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

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

- (1) to guarantee the collection of assessments, fees, penalties, or interest;
- (2) to guarantee continued 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.

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 commission.

Sec. 13.414. PENALTY AGAINST UTILITY OR AFFILIATED INTEREST. (a) Any utility or affiliated interest that knowingly 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 commission or decree or judgment of a court is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each offense.

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

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

Sec. 13.415. PERSONAL PENALTY. Any person who wilfully and knowingly violates this chapter is guilty of a third degree felony.

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 utility or any officer, director, agent, or employee or any other corporation or person.

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person fails to comply with any lawful order of the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES. Fines and penalties collected under this chapter in other than criminal proceedings shall be paid to the commission and deposited in the General Revenue Fund.

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.

[Sections 13.420-13.450 reserved for expansion]

SUBCHAPTER L. COMMISSION FINANCING

Sec. 13.451. ASSESSMENTS ON PUBLIC UTILITIES. An assessment is imposed on each public utility under the commission's jurisdiction serving the ultimate consumer in an amount equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in this state to pay the costs and expenses incurred in the administration of this chapter. The commission, subject to the approval of the legislature, shall subsequently adjust this assessment to provide a level of income sufficient to fund commission operation.

Sec. 13.452. PAYMENT DATES; DELINQUENCY. (a) Except as provided by Subsection (b) of this section, assessments are due on August 15 of each year.

(b) A utility may make quarterly payments due on August 15, November 15, February 15, and May 15 of each year.

(c) There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of 10 percent a year on the assessment and penalty due.

Sec. 13.453. COLLECTION AND PAYMENT INTO GENERAL REVENUE FUND. (a) All fees, penalties, and interest paid under Sections 13.451 and 13.452 of this code shall be collected by the comptroller of public accounts and paid into the General Revenue Fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 13.451 of this code when made.

(b) Chapters 111, 112, and 113, Tax Code, apply to the administration, collection, and enforcement of the assessment imposed under this code except as modified by this code.

Sec. 13.454. APPROVAL OF BUDGET. The budget of the commission is subject to legislative approval as part of the General Appropriations Act.

Sec. 13.455. ACCOUNTING RECORDS; AUDIT. The commission shall keep the accounting records required by the State Auditor and is subject to periodic audit.

[Sections 13.456-13.490 reserved for expansion]

SUBCHAPTER M. MISCELLANEOUS PROVISIONS

Sec. 13.491. COMPLAINT BY ANY AFFECTED PERSON. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted by any utility in violation or claimed violation of any law that the regulatory authority has jurisdiction to administer or of any order, ordinance, or rule of the regulatory authority.

Sec. 13.492. RECORD OF PROCEEDINGS; RIGHT TO HEARING. A record shall be kept of all proceedings before the regulatory authority, and all the parties are entitled to be heard in person or by attorney.

Sec. 13.493. JUDICIAL STAY OR SUSPENSION OF ORDER, RULING, OR DECISION. During the pendency of an appeal, the district court, the court of appeals, or the supreme court may stay or suspend in whole or in part the operation of the regulatory authority order, ruling, or decision. In granting or refusing a stay or suspension the court shall act in accordance with the practice of courts exercising equity jurisdiction.

Sec. 13.494. CERTAIN WATER AND SEWER UTILITY PROPERTY INCLUDED IN RATE BASE; VALUATION USED; DEPRECIATION EXPENSE. (a) This section applies notwithstanding any other provision of this chapter.

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

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

PART 4. WATER DEVELOPMENT

SECTION 4.001. Chapter 16, Water Code, is amended by adding Section 16.1341 to read as follows:

Sec. 16.1341. PAYMENT FOR RELEASES AND PASS-THROUGHS FROM STATE RESERVOIRS. (a) If the commission orders, for the purpose of maintaining the ecological health of any bay and estuary system, a release or pass-through of appropriated water from an existing reservoir owned in part by the board on September 1, 1985, the board shall pay the amount necessary to pay all maintenance and operating costs associated with the storage and release of the water.

(b) If the order under Subsection (a) of this section results in a dedication that reduces the reservoir's firm yield water supply capability, the board is responsible for repayment of that portion of the construction cost indebtedness associated with that dedication.

PART 5. WATER QUALITY

ARTICLE A. CIVIL PENALTIES

SECTION 5.001. Sections 26.122 and 26.123, Water Code (effective until delegation of NPDES permit authority), are amended to read as follows:

Sec. 26.122. CIVIL PENALTY. A person who violates any provision of this chapter or any rule, permit, or order of the *commission* [~~department~~] is subject to a civil penalty of not less than \$50 nor more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation to be recovered as provided in this subchapter.

Sec. 26.123. ENFORCEMENT BY COMMISSION [~~DEPARTMENT~~]. (a) *The commission shall diligently and uniformly enforce each of its rules, permits, and orders.*

(b) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, permit, or order of the *commission* [~~department~~], then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(c) [(b)] On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or order of the *commission* [~~department~~], the district court shall grant the injunctive relief the facts may warrant.

(d) [(e)] At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (b) [(a)] of this section.

SECTION 5.002. Sections 26.122 and 26.123, Water Code (effective on delegation of NPDES permit authority), are amended to read as follows:

Sec. 26.122. CIVIL PENALTY. (a) A person who violates any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 26.121 [~~21-251~~], or who violates any rule, permit, or order of the *commission* [~~department~~] is subject to a civil penalty of not less than \$50 nor more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation to be recovered as provided in this subchapter.

(b) A person who violates Subsection (d) or Subsection (e) of Section 26.121 [~~21-251~~] of this chapter is subject to a civil penalty of not more than \$10,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the *commission* [~~department~~] prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

Sec. 26.123. ENFORCEMENT BY *COMMISSION* [~~DEPARTMENT~~]. (a) *The commission shall diligently and uniformly enforce each of its rules, permits, or orders.*

(b) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 26.121 [~~21-251~~], or has violated or is violating, or is threatening to violate, any rule, permit, or order of the *commission* [~~department~~], then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(c) [~~(b)~~] Whenever it appears that a person has violated or is violating, or is threatening to violate, *Subsection* [~~Subchapter~~] (d) or *Subsection* [~~Subchapter~~] (e) of Section 26.121 [~~21-251~~] of this chapter, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not more than \$10,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the *commission* [~~board~~] prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

(d) [~~(c)~~] On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or order of the *commission* [~~department~~], the district court shall grant the injunctive relief the facts may warrant.

(e) [~~(d)~~] At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (b) [(a)] or (c) [(b)] of this section.

SECTION 5.003. Section 26.213, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.213. CRIMINAL PENALTY. A person who violates the provisions of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$10,000 [~~\$1,000~~]. Each day that a violation occurs constitutes a separate offense.

SECTION 5.004. Section 26.213, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.213. CRIMINAL PENALTY. (a) A person who violates the provisions of Subsection (a) or Subsection (b) of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$10,000 [~~\$1,000~~]. Each day that a violation occurs constitutes a separate offense.

(b) A person who violates the provisions of Subsection (c), (d), or (e) of Section 26.212 is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25,000; provided, however, that violations of limitations or conditions included in permits issued by the commission prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or violations of limitations or conditions included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator, shall be punishable by a fine of not less than \$10 nor more than \$10,000 [~~\$1,000~~]. Each day that a violation occurs constitutes a separate offense.

SECTION 5.005. Subsections (a), (b), and (e), Section 26.268, Water Code, are amended to read as follows:

(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the *commission* [~~department~~].

(b) Any person who violates any provision of this subchapter or of a *commission* [~~department~~] rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than \$100 nor more than \$10,000 [~~\$2,000~~] for each act of violation and for each day of violation.

(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and removed by the responsible party in accordance with the rules and orders of the *commission* [department], unless the department finds that the discharge or spill is the result of the negligence of the responsible party.

ARTICLE B. COMMENTS ON USE OF FRESH WATER

SECTION 5.006. Section 27.0511, Water Code, is amended to read as follows:

Sec. 27.0511. **CONDITIONS OF CERTAIN PERMITS.** (a) If the railroad commission receives an application for an injection well permit for a well that is to be used for enhanced recovery of oil, before a permit for the well may be granted, the railroad commission shall require the applicant for the permit to provide written information relating to the material that the applicant plans to inject into the well for enhanced recovery purposes and to other material available to the applicant that might be used to inject into the well for enhanced recovery and shall make the determination required by Subsection (c) [(b)] of this section.

(b) *At the time the railroad commission receives an application under Subsection (a) of this section, it shall give notice to the commission that an application covered by this section is being considered and shall supply the commission with a copy of the application and a request for commission comment on the application. On receiving the information requested under Subsection (a) of this section, the railroad commission shall notify the commission that the information has been received and make the information available for the commission's inspection. The commission shall examine the application and information. Before the railroad commission considers the application, the commission shall submit to the railroad commission written comments regarding the use of fresh water under the permit and any problems that the commission anticipates will result from the use of fresh water under the permit. However, if the commission does not submit its written comments within 30 days after the request, the railroad commission may consider the application without the commission comments.*

(c) On receiving the information required by Subsection (a) of this section, the railroad commission shall consider the information at the same time it considers whether or not to grant the permit, and if the applicant proposes to inject fresh water into the injection well for enhanced recovery, the railroad commission shall consider whether or not there is some other solid, liquid, or gaseous substance that is available to the applicant and that is economically and technically feasible for the applicant to use for enhanced recovery purposes.

(d) [(e)] If the railroad commission finds that there is a solid, liquid, or gaseous substance other than fresh water available and economically and technically feasible for use in enhanced recovery under the permit, the railroad commission shall include as a condition of the permit, if granted, that the permittee use the other substance found to be available and economically and technically feasible and that the applicant not use fresh water or that the applicant use fresh water only to the extent specifically stated in the permit.

(e) [(d)] This section does not apply to injection well permits that are in effect on September 1, 1983. If fresh water is being injected into an injection well in an enhanced recovery program that is in effect on September 1, 1983, and after that time, another substance or material is used for injection for a period of time, the injection well permit is not canceled, and a new permit under this chapter is not required if the operator plans at a later date to resume the use of fresh water for injection in that enhanced recovery program.

(f) [(e)] Injection well permits for wells that are used for enhanced recovery remain in force until canceled by the railroad commission.

(g) [(f)] No person may continue utilizing or begin utilizing industrial or municipal waste as an injection fluid for enhanced recovery purposes without first obtaining a permit from the *commission* [department].

ARTICLE C. ADMINISTRATIVE PENALTIES

SECTION 5.007. Chapter 26, Water Code, is amended by adding Section 26.136 to read as follows:

Sec. 26.136. **ADMINISTRATIVE PENALTY.** (a) *If a person violates this chapter or a rule or order adopted or a permit issued under this chapter, the commission may assess a civil penalty against that person as provided by this section.*

(b) *The penalty may be in an amount not to exceed \$10,000 a day for a person who violates this chapter or a rule, order, or permit. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.*

(c) *In determining the amount of the penalty, the commission shall consider:*

(1) *the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;*

(2) *the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;*

(3) *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 alleged violator to rectify the cause of the violation;*

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

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

(4) *any other matters that justice may require.*

(d) *If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.*

(e) *Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person 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 charged to a hearing on the occurrence of the violation, or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.*

(f) *Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.*

(g) *If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.*

(h) *If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either 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 the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.*

(i) *The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.*

(j) *Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:*

(1) *pay the penalty in full; or*

(2) *if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:*

(A) *forward the amount of the penalty to the commission for placement in an escrow account; or*

(B) *instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.*

(k) *Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (j)*

of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) *Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(m) *A penalty collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.*

(n) *Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.*

(o) *Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.*

SECTION 5.008. Chapter 27, Water Code, is amended by adding Section 27.1015 to read as follows:

Sec. 27.1015. ADMINISTRATIVE PENALTY. (a) *If a person violates the provisions of this chapter under the jurisdiction of the commission, a rule adopted by the commission, or an order adopted or permit issued by the commission under this chapter, the commission may assess a civil penalty against that person as provided by this section.*

(b) *The penalty may be in an amount not to exceed \$10,000 a day for a person who violates this chapter or a rule, order, or permit. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.*

(c) *In determining the amount of the penalty, the commission shall consider:*

(1) *the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;*

(2) *the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;*

(3) *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 alleged violator to rectify the cause of the violation;*

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

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

(4) *any other matters that justice may require.*

(d) *If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.*

(e) *Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person 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 charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.*

(f) *Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.*

(g) *If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.*

(h) *If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either 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 the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (j) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A penalty collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(n) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

SECTION 5.009. Chapter 28, Water Code, is amended by adding Section 28.067 to read as follows:

Sec. 28.067. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter or a rule or order adopted or a permit issued under this chapter, the commission may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed \$10,000 a day for a person who knowingly violates this chapter or a rule, order, or permit. For all other violations, 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 for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) 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 violator to rectify the cause of the violation;

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

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

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors set forth in Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.

(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person 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 charged to a hearing on the occurrence of the violation, or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that no violation has occurred, that a violation has occurred but no penalty should be assessed, or that a violation has occurred and a penalty should be assessed. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors set forth in Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (j) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A penalty collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(n) Notwithstanding anything to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violations for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

ARTICLE D. CERTIFICATE OF COMPETENCY

SECTION 5.010. Chapter 26, Water Code, is amended by adding Section 26.0301 to read as follows:

Sec. 26.0301. CERTIFICATE OF COMPETENCY. (a) The holders of permits to discharge wastewater from a sewage treatment facility shall employ a treatment plant operator holding a valid certificate of competency issued under the direction of the commission.

(b) Every person, company, corporation, firm, or partnership that employs sewage treatment plant operators and is in the business of providing as a sewage treatment facility operations must hold a valid certificate of competency issued under the direction of the commission. Any employee of a person, company, corporation, firm, or partnership who will be operating a sewage treatment facility must hold a valid certificate of competency issued under the direction of the commission.

(c) The commission may suspend or revoke the certificate of competency for sewage treatment facility operation of an individual treatment facility operator or a sewage treatment facility operations company, after notice and hearing before the commission, if the holder of a certificate of competency is responsible for violating a discharge permit of a sewage treatment plant.

(d) The holder of a certificate of competency is not subject to the revocation or suspension of the certificate of competency under Subsection (c) of this section if:

(1) the holder of a certificate is unable to properly operate the sewage treatment facility due to the refusal of the permittee to authorize necessary expenditures to operate the sewage treatment facility properly; or

(2) failure of the sewage treatment facility to comply with its discharge permit results from faulty design of the sewage treatment facility.

SECTION 5.011. Section 26.0191, Water Code, is amended to read as follows:

Sec. 26.0191. TEMPORARY AND EMERGENCY ORDERS AND AUTHORIZATIONS TO DISCHARGE UNTREATED OR PARTIALLY TREATED WASTEWATER. (a) The commission may issue temporary or emergency orders relating to the discharge of waste or pollutants ~~[without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances.]~~ when this is necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into or adjacent to water in this state shall submit a sworn application to the commission containing the following information and any other information the commission requires:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge; and

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use.

(c) The commission may issue emergency orders relating to the discharge of waste or pollutants without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the applicant's statement made under Subsection (b)(1) of this section to be correct.

(d) ~~[(b)]~~ If the commission uses an ~~[a temporary or]~~ emergency order under this authority without a hearing, the order shall fix a time and place for a hearing to be held before the commission, which shall be held as soon after the ~~[temporary or]~~ emergency order is issued as is practicable.

(e) ~~[(e)]~~ At the hearing, the commission shall affirm, modify, or set aside the ~~[temporary or]~~ emergency order. Any hearing on an emergency order shall be conducted in accordance with ~~[if the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of]~~ the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), or ~~[and]~~ the rules of the department. Any set of department rules concerning a hearing on an emergency order must include provisions for

presentation of evidence by the applicant under oath, presentation of rebuttal evidence, and cross-examination of witnesses.

(f) ~~[(d)]~~ *If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this section, the [The] executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into or adjacent to water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, [or] severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility, [and] that there are no feasible alternatives to the discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in Subsection (d) ~~[(b)]~~ of this section as soon as practicable but in no event later than 10 days after issuance of the authorization to affirm, modify or set aside the authorization. The requirements of Subsection (b) of this section shall be satisfied by the applicant on or before such hearing date.*

(g) ~~[(e)]~~ *The requirements of Section 26.022 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an emergency permit under this section, but such general notice of the hearing shall be given as the commission, under Subsections (c) ~~[(a)]~~ and (e) ~~[(e)]~~ of this section [or the executive director under Subsection (d) of this section], considers practicable under the circumstances.*

(h) *Temporary orders other than emergency orders require a hearing before issuance of the order. The commission shall give notice not less than 20 days before the date set for the hearing.*

SECTION 5.012. Subsections (a) and (d), Section 26.028, Water Code, are amended to read as follows:

(a) *Except as provided in Subsections (b) and (c) of this section, notice shall be given to the persons who in the judgment of the commission may be affected by an application for a permit, permit amendment, or renewal of a permit. For any application involving an average daily discharge of five million gallons or more, the notice shall be given not later than 20 days before the date on which the commission acts on the application, to each county judge in the county or counties located within 100 statute miles of the point of discharge who have requested in writing that the commission give that notice and through which water, into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge. The commission, on the motion of a commissioner, or on the request of the executive director or any affected person, shall hold a public hearing on the application for a permit, permit amendment, or renewal of a permit.*

(d) *For the purposes of Subsection (a), the commission may act on the application without holding a public hearing if all of the following conditions are met:*

(1) *not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge;*

(2) *not less than 30 days before the date of action on the application by the commission, the applicant has served or mailed the commission's notice of the application to persons who in the judgment of the commission may be affected, including the county judges as required by Subsection (a) of this section. As part of his application the applicant shall submit an affidavit which lists the names and addresses of the persons who may be affected by the application and includes the source of the list;*

(3) *within 30 days after the date of the newspaper publication of the commission's notice, neither a commissioner, the executive director, nor an affected person who objects to the application has requested a public hearing.*

SECTION 5.013. Chapter 27, Water Code, is amended by adding a new Section 27.036 to read as follows:

Sec. 27.036. JURISDICTION OVER BRINE MINING. (a) The railroad commission has jurisdiction over brine mining and may issue permits for injection wells used for brine mining.

(b) A person may not begin to drill an injection well to be used for brine mining unless that person has a valid permit for the well issued by the railroad commission under this chapter.

(c) The railroad commission shall adopt rules that are necessary to administer and regulate brine mining.

(d) For purposes of regulation by the railroad commission, an injection well for brine mining is designated as a Class V well under the underground injection control program administered by the railroad commission.

PART 6. SOLID WASTE DISPOSAL

SECTION 6.001. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Section 8b to read as follows:

Sec. 8b. (a) If a person violates the provisions of this Act relating to solid waste under the jurisdiction of the commission or a rule or order relating to solid waste under the jurisdiction of the commission adopted or a solid waste permit or registration issued by the commission under this Act, the commission may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed \$10,000 a day for a person who violates this chapter or a rule, order, or permit. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) 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 alleged violator to rectify the cause of the violation;

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

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

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.

(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person 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 charged to a hearing on the occurrence of the violation, or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either 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 the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or
 (2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commission for placement in an escrow account;
 or

(B) instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (j) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A penalty collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(n) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

PART 7. TEXAS DEPARTMENT OF HEALTH

SECTION 7.001. Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the management of municipal solid waste *other than hazardous municipal waste*, and shall be the coordinating agency for all municipal solid waste activities *other than activities relating to hazardous municipal waste*. The department shall be guided by the board of health in its activities relating to municipal solid waste *other than hazardous municipal waste*. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste management *other than management of hazardous municipal waste* by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the *commission* [~~department of water resources~~] with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The *commission* [~~department of water resources~~] is hereby designated the state solid waste agency with respect to the management of *all industrial solid waste and hazardous municipal waste*, and shall be the coordinating agency for all industrial solid waste activities *and hazardous municipal waste activities*. The *commission* [~~department of water resources~~] shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste management *and hazardous municipal waste management* by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The *commission* [~~department of water resources~~] has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The *commission* [~~department of water resources~~] shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the *commission* [~~department of water resources~~] by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste *and hazardous waste*, are involved in any activity of management of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste *and hazardous waste* [~~under the jurisdiction of the~~

~~department of water resources~~] may be accepted in a municipal solid waste facility if authorized in writing by the department with the written concurrence of the *commission* [~~department of water resources~~]. Solid waste [~~including hazardous waste,~~] under the jurisdiction of the department may be accepted in an industrial solid waste facility, if authorized in writing by the *commission* [~~department of water resources~~] with the written concurrence of the department.

(d) The department is designated under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), as the state agency with respect to regulating radioactive waste activities that are not preemptively regulated by the federal government. The *commission* [~~department~~] has all powers under the Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes), necessary or convenient to carry out responsibilities concerning the regulation of the management of *hazardous* [~~solid~~] waste components of any radioactive wastes under *the department's* [~~its~~] jurisdiction. *The commission shall consult with the department with regard to regulation and management under this subsection and may not adopt any rules or engage in any management activities under this subsection that are in conflict with state or federal laws and rules relating to regulation of radioactive wastes.*

SECTION 7.002. Subsections (b) and (c), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The department is authorized to develop a state [~~municipal~~] solid waste plan *for all solid waste under its jurisdiction*, and the *commission* [~~department of water resources~~] is authorized to develop a state [~~industrial~~] solid waste plan *for all solid waste under its jurisdiction*. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act. In developing rules relating to hazardous waste, *the commission* [~~each state agency~~] shall consult with *the department*, the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources. *The commission* [~~Within one year after the effective date of this Act, each state agency~~] shall adopt rules that:

(1) condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater;

(2) define the characteristics that make an area unsuitable for a hazardous waste management facility including, but not limited to, consideration of:

(A) flood hazards;

(B) discharge from or recharge to a groundwater aquifer; or

(C) soil conditions;

(3) prohibit issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the *commission* [~~agency~~] unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics; and

(4) require persons who generate, transport, process, store, or dispose of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

In adopting rules under Paragraphs (1)-(3) of this section, the *commission* [~~state agencies~~] may distinguish between solid waste facilities based on type or hazard of hazardous wastes managed and the type of waste management method used.

SECTION 7.003. Subsection (b), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Criminal Penalties. (1) Any person who knowingly:

(A) transports, or causes to be transported for storage, processing, or disposal, any hazardous waste to any location which does not have a permit as required by *the commission* [~~a state agency~~] exercising jurisdiction under Section 4 of this Act;

(B) stores, processes, or disposes, or causes to be stored, processed, or disposed, any hazardous waste without having obtained a permit as required by *the commission* [~~a state~~

agency] exercising jurisdiction under Section 4 of this Act or in knowing violation of any material condition or requirement of a permit;

(C) makes, or causes to be made, any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with any requirement of this Act applicable to hazardous waste; or

(D) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, any hazardous waste (whether such activity took place before or after the date of enactment of this section) and who knowingly destroys, alters, or conceals, or causes to be destroyed, altered, or concealed, any record required to be maintained under the rules promulgated by the *commission* [state agency] under this Act,

shall be subject, upon conviction, to a fine of not less than \$100.00 nor more than \$25,000.00 for each act of violation and each day of violation, or to imprisonment not to exceed 180 days, or both. If the conviction is for a violation committed after a first conviction of such person under this Section 8(b), punishment shall be by a fine of not less than \$200.00 nor more than \$50,000.00 for each day of violation, or by imprisonment not to exceed one year, or both.

SECTION 7.004. Subsection (a), Section 12, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Every person, firm, corporation, public or private, contemplating the establishment of any drinking water supply or sewage disposal system for public use shall, previous to construction thereof, submit completed plans and specifications therefor to the State Department of Health and the said Department shall approve same; provided said plans conform to the water safety and stream pollution laws of this state. The said water supply or sewage disposal system shall be established only after approval has been given by the State Department of Health. *To avoid duplication of review by state agencies, the State Department of Health approval is not required for drinking water supply or sewage disposal systems for public use if the plans and specifications are required by law to be approved by the Texas Water Commission.*

SECTION 7.005. Section 20, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. ~~[(a) The management of every public sewerage treatment plant shall employ a sewerage plant operator holding a valid certificate of competency issued under the direction of the Texas State Department of Health. Such sewerage plant operator shall be in charge of said plant. This certificate shall not apply to sewerage treatment plants using septic tanks and subsoil treatment.]~~

~~[(b)]~~ The Texas State Department of Health shall take all necessary procedures essential to the protection of any spring, well, pond, lake, reservoir, or other streams in Texas, from any condition or pollution resulting from sewage, that may endanger the public health, and shall have full authority to enforce all the laws of this state relating thereto.

PART 8. WATER WELL DRILLERS

SECTION 8.001. Section 2, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. **DEFINITIONS.** The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

(a) "Person" shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

(b) "Board" shall mean the Texas Water Well Drillers Board.

(c) "Executive director" shall mean the executive director of the Texas [Department of] Water Commission [Resources].

(d) "Commission" [~~Department~~] shall mean the Texas [Department of] Water Commission [Resources].

(e) "Water well" shall mean any artificial excavation constructed for the purpose of exploring for or producing ground water. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are used to produce ground water.

(f) "Water well driller" shall mean any person (including owner, operator, and drilling supervisor) who engages for compensation in the drilling, boring, coring, or construction of any water well in this State. The term, however, shall not include any person who drills, bores, cores, or constructs a water well on his own property for his own use or a person who assists in the

construction of a water well under the direct supervision of a licensed water well driller and is not primarily responsible for the drilling operations.

(g) "Licensed water well driller" shall mean any person who holds a license issued by the State of Texas pursuant to the provisions of this Act.

(h) "Pollution" shall mean the changing of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in a way that makes the water harmful to humans, animal life, vegetation, or property or to the public health, safety, or welfare or that impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(i) "Well log" shall mean a log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Board, on forms prescribed by the Board.

(j) "Water Well Drillers Board" shall mean an examining board consisting of nine (9) members, all of whom shall be voting members appointed by the Governor with the advice and consent of the Senate as hereinafter provided.

(k) "License fee" shall mean the initial fee to be paid by a driller under this Act.

(l) "Renewal fee" shall mean that fee paid by a previously licensed driller.

(m) "Examination fee" shall mean that non-refundable fee required of each applicant for each examination.

SECTION 8.002. Subsections (c), (d), (e), and (g), Section 3, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) At the time of making application, each applicant shall pay to the *commission* [department] the required examination fee which shall be non-refundable; and the successful candidates upon notification of eligibility shall pay to the *commission* [department] the license fee.

(d) All licenses issued under this Act shall expire on August 31 of each year; and on or before that day, each person holding a license shall pay to the *commission* [department] an annual renewal fee. The *commission* [department] shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration and shall attempt to obtain from each licensee a signed statement confirming receipt of the notice. A person may renew his unexpired license by paying to the *commission* [department] before the expiration date of the license the required renewal fee. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the *commission* [department] the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the *commission* [department] all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(e) The *commission* [department] shall maintain a current register of licensees.

(g) A duplicate license to replace a lost or destroyed license shall be issued by the *commission* [department] upon proper application and payment of a fee.

SECTION 8.003. Sections 4 and 5, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. ENDORSEMENT. The Board may develop rules specifying grounds by which the *commission* [department] may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Sec. 5. REPORTING OF WELL LOGS. Every licensed water well driller drilling, deepening or otherwise altering a water well within this State shall make and keep, or cause to be made and kept, a legible and accurate well log, and within 30 days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the *commission* [department], and the owner thereof or the person having had such well drilled. Each copy of a well log, other than a *commission* [department] copy, shall include the name, mailing address, and telephone number of the Board and the department. The well log required herein shall at the request in writing to the *commission* [department], by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

SECTION 8.004. Subsection (d), Section 52.118, Texas Water Code, is amended to read as follows:

(d) Nothing in this chapter applies to wells drilled for oil, gas, sulphur, *uranium*, or brine, or for core tests, or for injection of gas, salt water, or other fluid, or for any other purpose, under permits issued by the Texas Railroad Commission. The district shall not require a permit to drill a well to supply water for drilling any of these wells permitted by the Texas Railroad Commission. When the well ceases to be used for these purposes, it may then be used as an ordinary water well if it meets the spacing and other rules of the district; and its use is subject to the rules of the district.

SECTION 8.005. Subsections (d) and (n), Section 6, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) A Board member or an employee of the Board or the *commission* [department] connected with the administration of this Act may not be an officer, employee, or paid consultant of a trade association in the water well drilling industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(n) Administration of examination:

(1) The *commission* [department] shall offer examinations prepared by the Board at least once a year and more frequently if more than 10 persons petition the Board for an additional examination, or the Board should so provide.

(2) The examination shall be so administered so that the one who grades an examination does not know whose paper he is grading.

(3) The *commission* [department] shall maintain files of examination papers. Not later than the 30th day after the date a licensing examination is administered under this Act, the *commission* [department] shall notify each examinee of the results of the examination. A person, at any time within six months of the date that he is notified of the results of an examination, is entitled to inspect his examination paper during normal business hours at the *commission's* [department's] offices for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading. If requested in writing by a person who fails the licensing examination administered under this Act, the *commission* [department] shall furnish the person with an analysis of the person's performance on the examination.

SECTION 8.006. Subsection (c), Section 9, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Service of citation on the Board must be accomplished within thirty (30) days after the date the petition was filed. Citation may be served on the Executive Director [of the department] or on any member of the Water Well Drillers Board.

SECTION 8.007. Sections 10, 11, 12, and 17, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 10. DUTIES OF THE COMMISSION [DEPARTMENT]. (a) The *commission* [department] shall furnish the Board with necessary clerical services, including space for holding examinations; printing examinations; printing and mailing licenses; sending notices; collecting fees and issuing receipts; employing secretarial assistance; replying to routine requests for information; printing forms and information; typing all letters to be reproduced; maintaining records and completed examinations; and keeping records of receipts and disbursements; providing necessary legal services; and providing necessary investigative services, and the *commission* [department] shall promulgate procedures and standards for plugging water wells.

(b) The Board shall have access to information kept by the *commission* [department] under this Act.

(c) The *commission* [department] shall adopt the necessary procedural rules in order to carry out the imposed duties under this Section of this Act.

(d) The *commission* [department] shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The *commission* [department] shall make the information available to the general public and appropriate state agencies.

(e) If a written complaint is filed with the Board relating to a licensee, the *commission* [department], at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation. The *commission* [department] shall maintain an information file about each complaint filed with the Board relating to a licensee.

Sec. 11. DISPOSITION OF REVENUES. (a) The state auditor shall audit the financial transactions of the Board and *commission* [department] in connection with the administration of this Act during each fiscal biennium.

(b) All money collected by the *commission* [~~department~~] under the provisions of this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the water well drillers fund and may be used only to administer this Act.

(c) On or before January 1 of each year, the *commission* [~~department~~] shall submit in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for funds received and disbursed under this Act by the *commission* [~~department~~] and the Board during the preceding year.

Sec. 12. CIVIL PENALTY. Any person who fails to comply with the provisions of this Act, or with any rule or regulation promulgated by the board or the *commission* [~~department~~] under this Act, shall be subject to a civil penalty in any sum not exceeding *Ten Thousand Dollars (\$10,000)* [~~One Thousand Dollars (\$1,000)~~] for each day of noncompliance and for each act of noncompliance, as the court may deem proper. A firm, partnership, association, corporation, or other group or combination with which the person was connected in relation to the act of noncompliance is also subject to the civil penalty. The action may be brought by the board in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides. Full authority is also given the executive director to enforce by injunction, mandatory injunction or other appropriate remedy, in courts having jurisdiction in the county where the offending activity is occurring, the provisions of this Act. At the request of the board or the executive director, the Attorney General shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in this section. Any party to a suit may appeal from a final judgment as in other civil cases. The obtaining of a license under the provisions of this Act by a person shall not act to relieve that person from liability under any statutory law or the Common Law.

Sec. 17. TRANSFER OF FUNCTIONS. In the event that the functions of the *commission* [~~Texas Department of Water Resources~~] necessary to the proper implementation of its duties under this Act are transferred to any other agency, the authority given herein to the *commission* [~~Texas Department of Water Resources~~] shall be transferred to such other agency.

PART 9. IRRIGATORS

SECTION 9.001. Subdivision (3), Section 1, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "Executive director" means the executive director of the Texas [~~Department of~~] Water *Commission* [~~Resources~~].

SECTION 9.002. Subsections (b) and (g), Section 3, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Each member of the board and his or her successor shall be appointed by the governor with the advice and consent of the senate. Two members shall be members of the public not licensed under this Act, and four members shall be licensed irrigators who have been actively engaged in the practice of irrigation of the type licensed under this Act for a period of at least five years. [~~A person is not eligible for appointment to the board if the person has contributed more than \$1,000 on behalf of the political candidacy of the governor who makes the appointments under this Act.~~] Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(g) Each member shall receive as compensation for his or her services *an amount provided by the General Appropriations Act* [~~\$25 a day~~] for each day he or she is actively engaged in official duties in addition to actual travel expenses.

SECTION 9.003. Subsections (a) and (b), Section 5, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The board may employ an executive secretary to perform the duties and functions provided by this Act and as directed by the board. [~~On approval of the board the executive secretary may contract with the executive director for staff necessary to assist in the administration of this Act. In the event staff is unavailable through contract, the executive secretary with approval of the board and the executive director may employ such staff.~~]

(b) The executive director shall provide necessary services [~~as available~~] to assist the executive secretary and the board in performing their duties and functions under this Act.

SECTION 9.004. Subsection (d), Section 6, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is repealed.

SECTION 9.005. Subsection (c), Section 8, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The board shall provide in its rules for the preparation, administration, and grading of examinations to acquire certificates of registration under this Act. The fee for taking the examination *shall be set by the board not to exceed \$100 [is \$50]* for the irrigator certificate of registration and *not to exceed \$75 [is \$35]* for the installer certificate of registration.

SECTION 9.006. Subsection (b), Section 9, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The application for registration under this section shall be accompanied by a fee of not to exceed \$100 [is \$50] for a licensed irrigator or \$75 [is \$35] for a licensed installer as determined by the board.

SECTION 9.007. Subsection (c), Section 10, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A person may renew his or her certificate at any time during the months of July and August of each year by payment of the fee adopted by the board in an amount of not more than \$150 [is \$100] for a licensed irrigator or \$100 [is \$50] for a licensed installer.

SECTION 9.008. Section 12, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. PENALTY; INJUNCTION. (a) A person who represents himself or herself as a licensed irrigator or licensed installer in this state without being licensed or exempted under this Act, who presents or attempts to use as his or her own the certificate of registration or the seal of another person who is a licensed irrigator or licensed installer, who gives false or forged evidence of any kind to the board or to any member of the board in obtaining or assisting in obtaining for another a certificate of registration, ~~or who violates a provision of this Act or a rule adopted under this Act~~ shall be guilty of a Class C misdemeanor. Each day a violation of this subsection occurs constitutes a separate offense.

(b) *A person who violates this Act or a rule or order of the commission adopted under this Act is subject to a civil penalty of not to exceed \$1,000 for each offense. Each day a violation is committed is a separate offense.*

(c) *An action to recover the penalty under Subsection (b) of this section may be brought by the board in any court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.*

(d) *The board may enforce this Act or a valid rule or order of the commission by injunction or other appropriate remedy. The action may be brought by the board in a court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.*

(e) *At the request of the board, the attorney general shall institute and conduct a suit in the name of the state to recover the civil penalty as provided under Subsection (b) of this section or for injunctive relief or other appropriate remedy, or for both [The board or the executive director may request the attorney general to seek injunctive relief to prevent any of the acts of violation listed in Subsection (a) of this section].*

PART 10. MISCELLANEOUS PROVISIONS

SECTION 10.001. With regard to any permits and licenses issued by the Texas Water Commission on or before the effective date of this Act, the four-month period of noncompliance provided by Section 5.117, Water Code, as added by this Act, may not begin to accrue until September 1, 1985.

SECTION 10.002. The rules required to be adopted by Sections 5.103 and 6.101, Water Code, must be adopted and in force not later than January 1, 1986. All rules of the Texas Department of Water Resources that are in effect on September 1, 1985 shall remain in effect until the Texas Water Commission and the Texas Water Development Board adopt new rules for their areas of responsibility.

SECTION 10.003. (a) The purpose of Article C, Part 3, of this Act is to transfer water and sewer utility regulation from the Public Utility Commission of Texas under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) to the Texas Water Commission, and Chapter 13, Water Code, as added by this Act, is not intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of those exercised by the Public Utility Commission of Texas before March 1, 1986. Further, Chapter 13, Water Code, is not intended to affect the jurisdiction and responsibilities for water rate regulation presently vested in the Texas Water Commission under Title 2 of the Water Code. The transfer of water and sewer utility regulation from the Public Utility Commission of Texas to the Texas Water Commission does not impair or affect any act done or obligation, right, permit, license, standard or requirement, or penalty accrued or existing under the authority of the Public Utility

Regulatory Act, and any prior action of the Public Utility Commission of Texas remains in force pertaining to water and sewer utilities for the purpose of sustaining any proper action concerning such obligation, right, permit, license, standard or requirement, or penalty. No judicial action or proceeding instituted before March 1, 1986, is affected by the enactment of Chapter 13, Water Code.

(b) On March 1, 1986, all equipment, data, documents, facilities, and other items of the Public Utility Commission of Texas pertaining to water and sewer utilities shall be transferred to the Texas Water Commission.

(c) On March 1, 1986, the Texas Water Commission shall implement the powers and duties delegated to it by this Act. The commission, to the extent it considers advisable and under terms and conditions considered necessary and desirable, may contract with the Public Utility Commission of Texas to provide for the disposition of all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas on March 1, 1986, and the Public Utility Commission of Texas shall cooperate with the Texas Water Commission in assisting in the orderly transition of regulatory power contemplated by this Act. The contract may provide that the staff of the Public Utility Commission of Texas shall continue to process, analyze, investigate, provide evidence, and conduct hearings on the pending water and sewer utility matters consistent with this Act. Any matter that requires a final decision, however, shall be reduced to a written proposal for decision conforming to the requirements of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), which, together with the record, shall be submitted to the Texas Water Commission for final decision.

(d) The Texas Water Commission and the governing bodies of appropriate municipalities, if any, shall assume jurisdiction, and all powers and duties of regulation under Chapter 13, Water Code, on March 1, 1986.

(e) Nothing in this Act shall affect the jurisdiction of the Texas Water Commission otherwise afforded under Sections 11.036, 11.041, 12.013, and 50.275, Water Code.

SECTION 10.004. (a) The effective date of the reorganization of the Texas water agencies under this Act is September 1, 1985.

(b) It is the intent of the legislature that the Texas Water Commission and the Texas Water Development Board be separate agencies of the state.

(c) The development fund manager and his staff and other legal, engineering, and administrative staff that are necessary to assist the Texas Water Development Board in administering the water assistance program, the Texas Water Development Bond program, and other water financing programs assigned to the board by law and in carrying out its planning and other specific functions under the Water Code shall be transferred to the board from the Texas Department of Water Resources.

(d) The Texas Water Development Board and the Texas Water Commission shall enter into any contracts or other agreements that are necessary to make transfers between the Texas Water Development Board and the Texas Water Commission and to carry out an orderly transition. This section is subject to the limitations established in the General Appropriations Act.

(e) The Texas Water Commission, the Texas Water Development Board, the executive director, and the executive administrator shall cooperate in an orderly transition to the new agency organization provided by this Act. The Texas Water Commission shall continue to process, analyze, investigate, provide evidence and information, and carry out other duties for the Texas Water Development Board until this transition is completed.

(f) The reorganization of the Texas Department of Water Resources into the Texas Water Commission and Texas Water Development Board does not affect or impair any act done, bonds authorized or issued, or obligation, right, permit, license, standard, rule, criterion, order, resolution, or penalty that has accrued or that exists under the authority of the Texas Department of Water Resources, Texas Water Commission, or Texas Water Development Board as they existed before the effective date of this Act, and those bonds, obligations, rights, permits, licenses, standards, rules, and criteria remain in effect until such time as they are paid, recalled, changed, altered, renewed, amended, canceled, revoked, repealed, or abolished under the Water Code, other laws of this state, and outstanding contracts, agreements, and resolutions.

(g) The members of the Texas Water Commission and the Texas Water Development Board serving as members of that commission and that board on the effective date of this Act shall continue in office until the expiration of their respective terms.

SECTION 10.005. Sections 26.136, 27.1015, and 28.067, Water Code, and Section 8b, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), adopted by this Act, and amendments changing penalty amounts in Sections 26.122, 26.123, and 26.268, Water Code, and

Section 12, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), apply only to violations under those sections committed on or after September 1, 1985. Violations committed under Sections 26.122, 26.123, and 26.268, Water Code, and Section 12, The Water Well Drillers Act, before September 1, 1985, are subject to prosecution under those sections as they existed when the violation occurred and those laws are continued in effect for that purpose.

SECTION 10.006. Section 5.012 of this Act applies only to notice of an application for a permit, permit amendment, or permit renewal to discharge waste or pollutants into or adjacent to water in this state filed on or after the effective date of this Act. Notice of an application filed before the effective date of this Act is governed by Section 26.028, Water Code, as that law existed before amendment by this Act, and that law is continued in effect for that purpose.

SECTION 10.007. (a) This Act does not repeal any provision of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, and except as provided by Subsection (b) of this section, if there is a conflict between this Act and H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, H.B. No. 2 prevails.

(b) The reorganization of the Texas Department of Water Resources, the Texas Water Commission, and the Texas Water Development Board under Part 1 of this Act applies to the implementation of H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, and the powers and duties provided under H.B. No. 2 shall be implemented by the Texas Water Commission and the Texas Water Development Board under the organizational structure provided by this Act.

SECTION 10.008. (a) Adoption of Section 27.036, Water Code, does not invalidate any permit for an injection well used for brine mining that was issued by the Texas Water Commission before September 1, 1985. Within 90 days after the effective date of this Act, the Railroad Commission of Texas shall issue a substitute permit under the name and authority of the railroad commission to each person who on the effective date of this Act holds a valid permit issued by the Texas Water Commission for an injection well used for brine mining.

(b) Application for injection well permits covering brine mining submitted to the Texas Department of Water Resources before the effective date of this Act for which permits have not been issued by the Texas Water Commission shall be transmitted to the Railroad Commission of Texas for processing and determination under Section 27.036 and other pertinent sections of Chapter 27, Water Code.

(c) On September 1, 1985, the Railroad Commission of Texas shall assume jurisdiction over all injection wells used for brine mining for which permits were previously issued by the Texas Water Commission.

SECTION 10.009. This Act takes effect September 1, 1985.

SECTION 10.010. The following sums, or as much of them as may be necessary for the object and purposes shown, are appropriated from the General Revenue Fund and from other funds as specified, for the expenses of the named executive and administrative departments and agencies of the state.

The amounts appropriated by this section prevail over conflicting amounts appropriated by H.B. 20, Acts of the 69th Legislature, Regular Session, 1985, regardless of the relative dates of enactment.

Agencies receiving appropriations under this section shall be subject to all the provisions of Article V of H.B. 20, including the salary rates authorized therein and shall receive the proportional amount of the allocation for salary increases appropriated by Section 95 of Article V of H.B. 20.

House

TEXAS WATER DEVELOPMENT BOARD

	<i>For the Years Ending</i>	
	<i>August 31,</i> <u>1986</u>	<i>August 31,</i> <u>1987</u>
1. a. <i>Per Diem of Board Members, 6 at \$30</i>	\$ 6,800	\$ 6,800
b. <i>Travel and Expenses</i>	<u>17,640</u>	<u>17,640</u>
<i>Subtotal</i>	\$ 24,440	\$ 24,440

House

TEXAS WATER DEVELOPMENT BOARD

	<i>For the Years Ending</i>	
	<u>August 31, 1986</u>	<u>August 31, 1987</u>
2. a. <i>Executive Administrator</i>	\$ 51,100	\$ 51,100
b. <i>Other Administration</i>	312,740	312,740
3. a. <i>Development Fund Manager</i>	46,000	46,000
b. <i>Development Fund Management</i>	254,349	192,454
4. a. <i>Director of Planning</i>	49,100	49,100
b. <i>Water Resources Planning and Development</i>	1,585,710	1,587,912
5. <i>Construction Grants</i>	<u>2,295,290</u>	<u>2,295,290</u>
GRAND TOTAL, TEXAS WATER DEVELOPMENT BOARD	<u>\$ 4,618,729</u>	<u>\$ 4,559,036</u>
<i>General Revenue Fund</i>	\$ 2,636,719	\$ 2,577,026
<i>Water Quality Fund No. 153 (Federal Funds), estimated</i>	<u>1,982,010</u>	<u>1,982,010</u>
<i>Total, Method of Financing</i>	<u>4,618,729</u>	<u>\$ 4,559,036</u>

*Schedule of Exempt Positions,
Texas Water Development Board*

<i>Executive Administrator</i>	\$ 51,100	\$ 51,100
<i>Development Fund Manager</i>	46,000	46,000
<i>Director of Planning</i>	49,100	49,100
<i>Division Director, 2</i>	46,000	46,000

Texas Water Development Board Riders

1. There are hereby appropriated such amounts as may be necessary to pay the principal and interest on such bonds that mature or become due during the biennium beginning with the effective date of this Act, pursuant to Section 49-C of Article III of the Texas Constitution and Chapter 425, Acts 1957, Fifty-fifth Legislature. These funds shall be transferred to the Texas Water Development Bonds Interest and Sinking Fund.

2. It is the intent of the Legislature that all positions created for administration of federal grant programs shall be terminated upon discontinuance of the particular federal grant for which they were authorized.

3. As an exception to the provision in Article V of H.B. 20, 69th Legislature, 1985, appropriating federal funds for the purpose for which they are received; any federal funds received as reimbursement for services performed using General Revenue Funds, shall be deposited in the General Revenue Fund.

4. In the program, Water Development Fund Management, the amount of \$65,000 is appropriated for professional fees and services to be used only and specifically for expenses directly related to the issuance and investment of Texas Water Development Bonds, and that the 1986 unexpended balance be appropriated in 1987 for the same purpose.

5. There is hereby appropriated for the biennium beginning September 1, 1985, any balances on hand in the Water Assistance Fund No. 480, plus any revenues accruing to this fund for the purposes of House Bill 8, Sixty-seventh Legislature, First Called Session, 1981.

6. It is the intent of the Legislature that the Texas Water Development Board expend funds in amounts necessary to maintain the minimal estuarine data program.

7. Funds appropriated above for fiscal 1987 are made contingent on the continuation of the agency by the Legislature. In the event the agency is not continued, the funds appropriated for fiscal 1986 or as much thereof as may be necessary are to be used to provide for the phase out of agency operations.

8. Whenever applicable, the agency shall establish a fee for the production and distribution of publications. All fees collected are hereby appropriated for the 1986-87 biennium.

9. Any money transferred to the Water Quality Fund No. 153 from any federal or state agency, any gifts, fees or grants deposited in Fund No. 153, and any balance remaining in Fund No. 153 as of August 31, 1985, are hereby appropriated for the biennium beginning September 1, 1985, for only those purposes for which the funds were initially received. At the close of the biennium, any unencumbered balances in Fund No. 153 shall be reported to the State Comptroller who shall transfer any unencumbered sums in excess of \$1,250,000 for Fund No. 153 to the General Revenue Fund.

10. Contingent on the adoption of the constitutional amendment proposed in House Joint Resolution 6, Sixty-ninth Legislature, Regular Session, the amount of Water Development Bonds sold for the purpose of state participation in projects as provided in Article III, Section 49-d-2 of the Texas Constitution is limited to \$50 million for the biennium beginning September 1, 1985.

11. Contingent upon House Bill No. 2, Sixty-ninth Legislature, Regular Session, becoming effective, in each fiscal year of the biennium beginning September 1, 1985 there is appropriated from the agricultural soil and water conservation fund:

(1) one-third of the deposits to the fund, not to exceed \$200,000 per year, to the Water Development Board for the purposes of Subchapter H, Chapter 15, Water Code;

(2) one-third of the deposits to the fund, not to exceed \$200,000 per year, to the State Soil and Water Conservation Board, for the purposes of Subchapter H, Chapter 201, Agriculture Code.

(3) one-third of the deposits to the fund, not to exceed \$200,000 per year, to the Texas Agricultural Experiment Station for research in agricultural water conservation and utilization.

12. Contingent upon enactment of House Bill No. 2, Sixty-ninth Legislature, Regular Session, in addition to the amounts appropriated above in item 3.b., Development Fund Management, there is hereby appropriated from the General Revenue Fund \$1,287,035 for 1986 and \$1,204,690 for 1987, for the purposes of implementing article 2 of the bill; and in addition to the amounts appropriated above in item 4.b., Water Resource Planning and Development, there is hereby appropriated from the General Revenue Fund \$847,591 for 1986 and \$854,339 for 1987 for the purposes of implementing the provisions of the bill.

House

TEXAS WATER COMMISSION

	For the Years Ending	
	August 31, <u>1986</u>	August 31, <u>1987</u>
1. Water Commission:		
a. Commissioners, 3	\$ 162,000	\$ 168,000
b. Office of Chief Clerk	187,216	187,216
c. Office of Chief Hearings Examiner	<u>787,544</u>	<u>794,848</u>
Total, Water Commission	<u>\$ 1,136,760</u>	<u>\$ 1,150,064</u>
2. Executive Function:		
a. General Administration	\$ 761,524	\$ 763,614
b. Office of General Counsel	883,411	882,685
c. Data and Engineering Services	3,243,133	3,221,513
d. Enforcement and Field Operations	8,548,911	8,694,151
e. Water Quality Planning	1,692,036	1,552,036
f. Permits	4,366,840	4,387,883

House

TEXAS WATER COMMISSION

	For the Years Ending	
	August 31, 1986	August 31, 1987
g. Support Services	6,597,107	6,638,886
Total, Executive Function	<u>\$ 26,094,962</u>	<u>D 26,140,768</u>
3. Public Interest Advocate	<u>\$ 45,546</u>	<u>\$ 45,546</u>
GRAND TOTAL, TEXAS WATER COMMISSION	<u><u>\$ 27,277,268</u></u>	<u><u>\$ 27,336,378</u></u>
Method of Financing:		
Texas Water Commission:		
General Revenue Fund	\$ 14,506,464	\$ 14,543,873
Water Development Board Fund No. 41, estimated	853,688	853,688
Water Quality Fund No. 153 (Federal Funds), estimated	5,610,390	5,762,238
Water Rights Administration Fund No. 158, estimated	603,980	734,720
Spill Response Fund No. 452, estimated	300,000	300,000
Waste Treatment Inspection Fund No. 519, estimated	2,797,088	2,797,088
Earned Federal Funds	<u>2,305,658</u>	<u>2,344,771</u>
Total, Method of Financing	<u><u>\$ 27,277,268</u></u>	<u><u>\$ 27,336,378</u></u>

Schedule of Exempt Positions,
Texas Water Commission

Executive Director	\$ 64,100	\$ 64,100
Deputy Director	51,100	51,100
Assistant Executive Directors, 2	49,100	49,100
Water Commissioners, 3	54,000	56,000
Chief Hearings Examiner	46,000	46,000
General Counsel	46,000	46,000
Division Directors, 5	46,000	46,000

Texas Water Commission Riders

1. It is legislative intent that the Support Services Activity be administered in such a way as to insure responsiveness to the needs and requests of, and to provide cost effective service to, all users of such supporting services. The Support Services Activity shall develop and implement an adequate accounting and billing system that will allow for the full recovery of expenses incurred by the Department of Water Resources in the provision of automatic data processing services. Necessary salaries and other expenses from the Support Services Activity are allocated for continued work on the Texas Natural Resources Information System being implemented by the state's natural resource agencies through the TNRIS Task Force.

2. Notwithstanding any other provision in Article V of H.B. 20, 69th Legislature, 1985, the agency is authorized to spend appropriated funds for the chartering of aircraft for the purposes of detecting water pollution problems, industrial solid waste disposal problems, illegal water diversions, and for purposes directly relating to the enforcement of pollution control and water rights laws of the State.

3. It is the intent of the Legislature that all positions created for administration of federal grant programs shall be terminated upon discontinuance of the particular federal grant for which they were authorized.

4. The Texas Water Commission shall approve the rates to be charged by its reporters on transcripts that are sold, not to exceed that authorized by law to be paid to Travis County district court reporters. All proceeds from the sale of transcripts shall be deposited in the General Revenue Fund.

5. There is hereby appropriated all fees collected as authorized by the Water Rights Adjudication Act, Senate Bill No. 92, Acts, Sixtieth Legislature, 1967, said fees to be transmitted to the State Treasurer for deposit in a Water Rights Administration Fund and to be used for any of the purposes authorized by House Bill No. 168, Acts, Sixtieth Legislature, 1967.

6. The amounts specified above are appropriated from revenues received during the biennium beginning with the effective date of this Act, and from any balances on hand at the beginning of each fiscal year of the biennium in the Water Rights Administrative Fund No. 158.

7. There is hereby appropriated for the biennium beginning September 1, 1985, any balances on hand in the Spill Response Fund No. 452 as of August 31, 1985, and any revenues and receipts deposited to the Spill Response Fund.

8. As an exception to the provision in Article V of H.B. 20, 69th Legislature, 1985, appropriating federal funds for the purpose for which they are received; any federal funds received by the agency as reimbursement for services performed using General Revenue Funds, shall be deposited in the General Revenue Fund.

9. Funds appropriated above to program Water Commission may be transferred between Sub-items b. and c.

10. The agency is authorized to negotiate with and receive funds from the Bureau of Reclamation of the U.S. Department of Interior for the purpose of carrying out weather modification experiments, studies, and analyses. Any funds received by the department shall be used to accomplish such work through interagency contracts with qualified Texas universities, state agencies, and special purpose political subdivisions of Texas, and through contracts with private companies.

11. Except as otherwise provided in this rider, there is hereby appropriated any balances on hand in the Disposal Facilities Response Fund No. 477, established by Senate Bill No. 758, Acts of the Sixty-seventh Legislature, as of August 31, 1985. The funds are appropriated for use as state matching funds as required by Section 104 of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This fund may also be used for the purpose of evaluating and ranking hazardous waste sites as required by CERCLA in an amount not to exceed \$75,000 per annum. Any other revenues deposited in the Disposal Facilities Response Fund during the biennium beginning September 1, 1985, are appropriated for use by the agency. However, if House Bill No. 2359, Sixty-ninth Legislature, Regular Session, is enacted, \$3,000,000 of the balance on hand in the Disposal Facilities Response Fund as of August 31, 1985, is hereby transferred to the General Revenue Fund.

12. Out of the funds appropriated above the amount of Twenty-seven Thousand Four Hundred Dollars (\$27,400) may be expended each year of the biennium to contract health monitoring services for hazardous waste inspectors whose work poses the possibility of exposure to toxic materials.

13. All revenues deposited to the Waste Treatment Facility Inspection Fund No. 519 during the 1986-87 biennium and any balance remaining in the fund as of August 31, 1985, are appropriated to the department for the purposes authorized by the Act.

14. Funds appropriated above for fiscal 1987 are made contingent on the continuation of the agency by the Legislature. In the event the agency is not continued, the funds appropriated for fiscal 1986 or as much thereof as may be necessary are to be used to provide for the phase out of agency operations.

15. It is the intent of the Legislature that only those funds appropriated from the Water Well Drillers Fund No. 079 for contracting with the agency shall be used by the department to support the operations of the Water Well Drillers Board.

16. In addition to those funds already appropriated, Earned Federal Funds out of the Disposal Facility Response Fund No. 477 are appropriated for use as state matching funds as required for Section 104 of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly referred to as the Superfund Act.

17. Whenever applicable, the agency shall establish a fee for the production and distribution of publications. All fees collected are hereby appropriated for the 1986-87 biennium.

18. Funds appropriated above in the program item "Executive Function" may be transferred to the Support Services activity from other activities.

19. Any money transferred to the Water Quality Fund No. 153 from any federal or state agency, any gifts, fees or grants deposited in Fund No. 153, and any balance remaining in Fund No. 153 as of August 31, 1985, are hereby appropriated for the biennium beginning September 1, 1985, for only those purposes for which the funds were initially received. At the close of the biennium, any unencumbered balances in Fund No. 153 shall be reported to the State Comptroller who shall transfer any unencumbered sums in excess of \$1,250,000 for Fund No. 153 to the General Revenue Fund.

20. To provide for the recovery of costs for the appropriations relating to inspecting waste treatment facilities, the following fee rates are established pursuant to Article 5429n, Vernon's Texas Civil Statutes, to be effective during the 1986-1987 biennium beginning September 1, 1985:

<i>Flow Category (MGD)</i>	<i>Fee</i>
(Million gallons per day)	
"No discharge" or Inactive	\$ 100
Flow less than or equal to 0.05	\$ 200
Flow greater than 0.05 but less than or equal to 0.10	\$ 400
Flow greater than 0.10 but less than or equal to 0.25	\$ 600
Flow greater than 0.25 but less than or equal to 0.50	\$ 800
Flow greater than 0.50 but less than or equal to 1.00	\$ 1,000
Flow greater than 1.00 but less than or equal to 2.00	\$ 2,000
Flow greater than 2.00 but less than or equal to 3.00	\$ 3,000
Flow greater than 3.00 but less than or equal to 4.00	\$ 4,000
Flow greater than 4.00 but less than or equal to 5.00	\$ 5,000
Flow greater than 5.00 but less than or equal to 6.00	\$ 6,000
Flow greater than 6.00 but less than or equal to 7.00	\$ 7,000
Flow greater than 7.00 but less than or equal to 8.00	\$ 8,000
Flow greater than 8.00 but less than or equal to 9.00	\$ 9,000
Flow greater than 9.00	\$10,000
Storm Water or Report	\$ 500

21. The amounts of \$509,077 for 1986 and \$536,318 for 1987 are hereby appropriated to the Water Commission as line item 3.j. Water and Sewer Utilities Regulation, out of the General Revenue Fund for the regulation of water and sewer utilities.

22. The amounts of \$78,445 for 1986 and \$74,145 for 1987 are hereby appropriated to the Water Commission out of the General Revenue Fund for the review and approval of water supply and sewage disposal projects.

23. In addition to the amounts appropriated above in item 2.f Permits, the amounts of \$16,446 for 1986 and \$16,446 for 1987 are hereby appropriated out of the General Revenue Fund for the approval of purchase, ownership and sale of certain mining equipment of river authorities.

24. In addition to the amounts appropriated above in Item 3. Public Interest Advocate, the amounts of \$14,724 for 1986 and \$14,724 for 1987 are hereby appropriated out of the General Revenue Fund to the Department of Water Resources for necessary office support.

25. In addition to the amounts appropriated above \$216,527 for 1986 and \$216,527 for 1987 is hereby appropriated out of the General Revenue Fund for the administration of the Municipal Hazardous Waste Program.

26. In order to ensure the efficient management and performance of the municipal hazardous waste program, it is the intent of the Legislature that the Texas Water Commission seek to employ and retain those employees currently working for the Texas Department of Health in this program.

27. Contingent upon the enactment of House Bill No. 2359, Sixty-ninth Legislature, Regular Session, the following amounts are appropriated:

- (1) From the Hazardous Waste Generation and Facilities Fee Fund:
 - a. \$600,000 each year of the biennium for hazardous waste permitting activities;
 - b. \$1,550,000 each year of the biennium for hazardous waste enforcement and field operations, including contracts with other agencies for enforcement-related activities; and
 - c. \$200,000 each year of the biennium to administer the funds created by House Bill No. 2359;
- (2) From the Hazardous Waste Disposal Fee Fund:

a. \$1,000,000 in the fiscal year beginning September 1, 1985 and unexpended balances in the fiscal year beginning September 1, 1986 for assessing the need to clean up abandoned sites not eligible for cleanup under federal law and necessary and appropriate remedial action at abandoned sites if sufficient funds are not available from other sources; and an estimated \$2,050,000 in the fiscal year beginning September 1, 1985 and an estimated \$7,700,000 plus unexpended balances in the fiscal year beginning September 1, 1986 for the purposes of the Disposal Facilities Response Fund No. 477.

28. Contingent upon the enactment of House Bill 2358 and House Bill 2359, Sixty-ninth Legislature, Regular Session, \$650,000 in each year of the biennium beginning September 1, 1985 is appropriated from the Hazardous Waste Generation and Disposal Facilities Fee Fund to implement additional activities authorized under House Bill No. 2358, relating to hazardous waste regulatory programs.

29. At such time the position of Executive Director of the Texas Water Commission becomes vacant, the salary of said position shall be reduced to \$52,000 each year of the biennium.

30. The Commission shall provide any necessary administrative and technical support services to the Water Development Board. In performing these functions the commission shall maintain and make available to the Legislature a detailed accounting of the services provided and the costs of providing administrative and technical assistance to the board.

31. Contingent upon enactment of House Bill No. 2, Sixty-ninth Legislature, Regular Session, in addition to the amounts appropriated above, the commission is hereby appropriated from the General Revenue Fund \$701,595 for 1986 and \$675,343 for 1987 for implementing the provisions of the bill.

32. Contingent upon the passage of House Bill No. 2359, Sixty-ninth Legislature, Regular Session, the amount of \$500,000 for 1986 and \$500,000 for 1987 are reduced from the General Revenue Fund in item 2.d. Enforcement and Field Operations.

Texas' River Compact Commissioners:

Out of the General Revenue Fund:	For the Years Ending August 31, 1986	August 31, 1987
1 Red River Compact Commission:		
a. Commissioner	\$ 23,100	\$ 23,100
b. Texas Pro-rata Share	16,000	18,179
c. Other Expenses	6,100	6,100
2. Rio Grande Compact Commission:		
a. Commissioner	35,200	35,200
b. Other Expenses	81,474	81,474
c. Professional Services (Reserve for Law Suit)	105,000	U.B.
3. Sabine Compact Commission:		
a. Commissioners	3,800	3,800
b. Other Expenses	25,200	25,200
4. Canadian River Compact Commission:		
a. Commissioner	9,200	9,200
b. Other Expenses	9,287	9,287
c. Professional Services (Law Suit Contingency)	40,000	U.B.
5. Pecos River Compact Commission:		
a. Commissioner	17,300	17,300
b. Other Expenses	78,900	80,400
c. Professional Services (Law Suit Contingency)	150,000	U.B.
Total, Texas' River Compact Commissioners	<u>\$600,561</u>	<u>\$309,240</u>

Texas' River Compact Commissioners:

Out of the General Revenue Fund:	For the Years Ending	
	August 31, 1986	August 31, 1987
<u>River compact Commissioners</u>		
<u>Schedule of Exempt Positions</u>		
Red River compact Commissioner	\$ 23,100	\$ 23,100
Rio Grande River Compact Commissioner	35,200	35,200
Sabine River Compact Commissioners, 2	3,800	3,800
Canadian Compact Commissioner	9,200	9,200
Pecos River Compact Commissioner	17,300	17,300

1. If it appears necessary for the State of Texas to bring a lawsuit against the State of New Mexico or Colorado, or agencies of the United States, in order to force compliance with the Rio Grande Compact, or any other laws affecting the rights of the State of Texas in the waters of the Rio Grande Compact Commissioner for Texas shall use the funds appropriated in Item 2.c., above, to gather and present facts to support the Texas case and to pay expenses levied by the court against the State of Texas. Unexpended balances in this item shall revert to the General Revenue Fund at the end of the 1986-87 biennium.

2. If it appears necessary for the State of Texas to bring a lawsuit against the State of New Mexico in order to force compliance with the Canadian River Compact, the amount of Forty Thousand Dollars (\$40,000) is appropriated in Item 4.c., above, to the Canadian River Compact Commission to gather and present facts to support the Texas case and to pay expenses levied by the court against the State of Texas. Unexpended balances in this item shall revert to the General Revenue Fund at the end of the 1986-87 biennium.

3. Funds appropriated to the Pecos River Compact Commission in Item 5.c., Professional Services, are to be used to purchase professional services related to the lawsuit, Texas v. New Mexico, No. 65 Original, U.S. Supreme Court. Unexpended balances in this item shall revert to the General Revenue Fund at the end of the 1986-87 biennium.

Texas Department of Health

The funds appropriated to the Department of Health in House Bill No. 20, Sixty-ninth Legislature, Regular Session, for the regulation of municipal hazardous waste, \$400,000 for 1986 and \$400,000, for 1987 from the Hazardous Waste Generation and Facility Fee Fund shall be appropriated to the Texas Water Commission for the regulation of municipal hazardous waste.

SECTION 10.011. Contingent on House Bill 2359, 69th Legislature, Regular Session, 1985, becoming law, Subsection (a) of Section 3 of the bill is amended to read as follows:

(a) Money collected and deposited in the hazardous waste generation and facility fees fund shall be restricted to the administration of hazardous waste management programs and shall be used only for the following purposes:

(1) Parks and Wildlife Department for monitoring impact of hazardous waste activity on fish and wildlife in an amount not to exceed \$200,000 for the 1986-87 biennium; and

(2) Texas Department of Water Resources for regulation of hazardous waste, including contracting for enforcement-related activities with other state agencies, in an amount not to exceed \$3.4 [2.9] million per annum [; and

~~(3) Texas Department of Health for regulation of hazardous wastes in an amount not to exceed \$500,000 per annum].~~

SECTION 10.012. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 10, 1985, by a viva-voce vote; Senate concurred in House amendments on May 26, 1985, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas; passed the House, with amendments, on May 25, 1985, by a non-record vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved: June 15, 1985

Effective: August 26, 1985